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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 250

[Docket ID: OPM-2026-0368]

RIN 3206-A077

Personnel Management in Agencies: Strategic Human Capital Management

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to modernize the framework governing personnel management and strategic human capital management in Federal agencies. This rule amends the regulatory framework for personnel management in Federal agencies to streamline human capital planning and reporting requirements, strengthen the authority of agency Chief Human Capital Officers (CHCOs), update employee survey requirements, and align the regulatory framework with Executive branch priorities for a high-performing Federal workforce. OPM carefully considered all public comments received on the proposed rule and has made targeted revisions in response.

DATES: Effective November 30, 2026.

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, Acting Deputy Associate Director, Center for Workforce Strategy, Design, and Insights, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415; email: workforce@opm.gov; phone (202) 606-1800.

SUPPLEMENTARY INFORMATION:

Background

The Civil Service Reform Act (CSRA) of 1978 established the foundational framework for merit-based personnel management in the Federal Government. Pursuant to the CSRA and subsequent statutory authority, OPM is

responsible for promulgating Governmentwide regulations governing Federal human capital management, including the systems and standards by which agencies plan, implement, and evaluate their human capital strategies.

Part 250 of title 5 of the Code of Federal Regulations establishes the regulatory framework for personnel management in Federal agencies. Subpart A sets standards for agency personnel actions and delegation agreements. Subpart B—Strategic Human Capital Management—defines the systems, standards, and metrics agencies must use to manage human capital, currently organized around the Human Capital Framework (HCF) and the Human Capital Operating Plan (HCOP), Human Capital Reviews (HCR), and HRStat quarterly reviews. Subpart C—Employee Surveys—governs the administration and public disclosure of annual Federal employee surveys and establishes a core set of 16 required survey questions.

On July 2, 2026, OPM published a proposed rule (91 FR 40435) to amend 5 CFR part 250 to modernize strategic human capital management across the Federal Government. The proposed rule proposed to: (1) consolidate and streamline human capital planning requirements by replacing the HCOP, HCR, and HRStat framework with Annual Staffing Plans (ASPs) and associated review processes; (2) strengthen CHCO authority and visibility; (3) require each agency to establish a Strategic Hiring Committee to oversee hiring within the agency; (4) revise the employee survey framework under subpart C, including changes to the Governmentwide core question set and survey administration; and (5) remove references to workforce diversity from the regulatory text.

In response to public comments, OPM has made targeted revisions to the proposed rule. Key changes from the proposed rule include: (1) clarifying the terminology distinguishing strategic human capital planning from operational staffing planning and tying Annual Staffing Plan development to the budget formulation cycle under the annual Office of Management and Budget (OMB) Circular A-11, Preparation, Submission, and Execution of the Budget, Part 6 (OMB, Circular No. A-11, Preparation, Submission, and Execution of the Budget (Aug. 29, 2025),

<https://www.whitehouse.gov/wp-content/uploads/2025/08/a11.pdf>); (2) adding an annual agency-head-certification requirement to ensure CHCO visibility, oversight, and control; and (3) permitting agencies to integrate Quarterly Staffing Plan Performance Reviews into existing performance review processes. Each of these changes is discussed in detail in the comment-response section below.

In response to comments, OPM also clarifies several matters that do not change the regulatory text, including the effect of the removal of nonstatutory references to a “diverse” workforce and the scope of the Strategic Hiring Committee’s role; those clarifications are addressed in the same section.

Digest of Public Comments

In response to the proposed rule, OPM received nine comments during the 30-day public comment period ending August 3, 2026. These responses came from a range of sources: individual citizens; nonprofit and professional organizations; and a former Federal employee writing in a private capacity. All nine comments are substantive and have been considered in full. All comments were posted and made available to the public in the docket. A reference to a comment provides the location of the item in the public record (*i.e.*, the four-digit number associated with the location in the docket) at <https://www.regulations.gov/comment/OPM-2026-0368-nnnn>. The comments are summarized below, together with OPM’s responses, including where OPM has adopted, partially adopted, or declined commenter suggestions, along with OPM’s reasoning. The comments are organized by issue category.

General Comments

Comment 0010 expressed general support for the proposed rule, noting it “will strengthen accountability, improve hiring practices, and enhance morale and recruitment across the federal workforce.” Comment 0010 offered additional recommendations to strengthen protections against political-to-career conversions (“burrowing in”), discussed further below.

Comments 0002 and 0005 expressed broad opposition to the rule. Comment 0002 argued the rule lacks the required cost-benefit analysis and would negatively affect employee retention and hiring quality. Comment 0005 urged

OPM to abandon the rule, citing concerns about administrative burden, potential for politicization of the civil service, and anticipated harm to scientific, diversity, equity, and inclusion-related roles, to include harmful impacts to sexual and gender orientation focused roles.

Comment 0002 argued that the proposed rule “does not seem to be in compliance with various regulatory requirements” because it lacks a cost-benefit analysis. OPM disagrees. The Office of Information and Regulatory Affairs designated this rulemaking a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993), and OPM has assessed its costs and benefits accordingly. A full regulatory impact analysis is required only for an action with an annual effect on the economy of \$100 million or more, or one that otherwise materially and adversely affects the economy or a sector of it. This rule governs the internal planning, review, and survey processes agencies use to manage their own workforces; it does not regulate the public or the private sector, and its estimated Governmentwide implementation cost, set out in the Costs section of this preamble, falls well below that threshold.

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits in proportion to the significance of the action, and OPM has done so: the Expected Impact section of this preamble states the need for the rule, quantifies first-year and ongoing implementation costs, describes the rule’s anticipated benefits, and discusses regulatory alternatives, including retaining the existing framework. The comment’s premise that no cost-benefit analysis exists is therefore mistaken. As to the comment’s prediction that the rule will increase costs by harming employee retention and candidate quality, OPM addresses workforce recruitment, retention, and morale in a dedicated section of this preamble and concludes, for the reasons stated there, that the rule is more likely to strengthen than to weaken the Government’s competitive position for talent.

Comment 0005 further asserted that the rule would harm scientific positions and positions focused on sexual and gender orientation. OPM disagrees. This rule does not create, abolish, classify, or reclassify any position, and it directs no agency to eliminate any occupation or occupational category. Subparts A and B govern how agencies plan, document, and review their human capital

management, and subpart C governs the annual employee survey. Decisions about which positions an agency establishes and fills remain the agency’s, made under the authorities governing position management and staffing and subject to applicable law. The requirement that an Annual Staffing Plan direct hiring to an agency’s highest-needed positions is a planning requirement; it does not prescribe which occupations an agency must treat as high-need.

Nor does the removal of nonstatutory references to a “diverse” workforce, discussed below, alter any agency’s obligations under the merit system principles at 5 U.S.C. 2301, the prohibited personnel practices at 5 U.S.C. 2302, or the equal employment opportunity requirements applicable to Federal employment under 42 U.S.C. 2000e–16. To the extent the comment addresses agency staffing decisions taken outside this rulemaking, those decisions are beyond the scope of this rule.

OPM appreciates all comments received. As discussed throughout this preamble, OPM has carefully considered concerns about administrative burden and the integrity of the merit system and has made targeted revisions in response. OPM is committed to a nonpartisan, merit-based civil service and believes the final rule, as modified, reflects that commitment.

Workforce Planning Framework

Comments 0006 and 0003 raised concerns about the proposed replacement of the Human Capital Operating Plan (HCOP) framework with Annual Staffing Plans. Comment 0006 expressed support for the rule’s emphasis on forward-looking workforce planning but cautioned that designating the primary planning document as a “staffing plan” may create unintended confusion between two distinct activities: (1) strategic human capital planning, which accounts for alignment with administration priorities, budget, organizational performance, and long-term talent needs; and (2) operational staffing planning, which addresses specific FTE needs, skills needs, and near-term staffing challenges within bureaus and program offices.

Comment 0006 recommended that the final rule delineate between these two types of planning and revise terminology to avoid conflation. Comment 0006 further recommended that agency staffing plans be led by the CHCO in coordination with the Chief Financial Officer (CFO), Chief Operating Officer (COO), and senior leadership to ensure that all offices have the people

and skills needed to execute their missions.

OPM agrees that clear terminology is important and that strategic human capital planning should be distinguished from operational staffing planning. In response to these comments, OPM has revised the final rule to clarify the relationship between the consolidated Annual Staffing Plan and the agency’s broader strategic human capital management obligations, as reflected in the definition of Annual Staffing Plan at § 250.202. The final rule makes clear that Annual Staffing Plans are the operational implementation mechanism for the agency’s strategic human capital strategy and are not a substitute for aligning human capital to the agency’s strategic plan, Annual Performance Plan, and administration priorities. OPM agrees that the CHCO should coordinate the Annual Staffing Plan with the CFO, COO, and senior leadership, and has added language to § 250.205 to reflect this expectation.

Succession Planning

Comment 0003 objected more broadly, arguing that replacing the HCOP with Annual Staffing Plans forces a short-term mentality onto Federal agencies designed for long-term national stability. Comment 0003 stated that managing human capital on a strict year-to-year basis makes it impossible to build and retain specialized talent pipelines and will trigger severe retention crises and skill gaps. Likewise, comment 0009 expressed concern that consolidating the planning and review framework could dilute attention to leadership succession planning. The commenter stated that multi-year investment in developing a bench of qualified career executives is “different in kind from annual hiring and staffing metrics, and it can be crowded out” if not explicitly addressed in the rule. The commenter recommended that the final rule includes explicit multi-year succession planning language to ensure succession planning is not subordinated to short-term staffing metrics.

OPM does not agree that the consolidated planning framework imposes an inappropriately short-term mentality on Federal agencies. Under the final rule, § 250.205(b)(2) specifically includes language that says the Annual Staffing Plan “must . . . enable succession planning” and the Annual Staffing Plan must support the four Human Capital Framework systems, of which Talent Management is one of the four systems and encompasses succession management. The final rule’s systems and standards under § 250.203(b) (Talent Management)

obliges agencies to engage in designing and implementing strategies that will “attract, acquire, develop, promote, and retain quality talent.” Developing, promoting, and retaining talent are all implicitly long-term goals for any human capital management system.

In addition, succession planning for leadership and management is also covered by 5 CFR part 412, subpart B. Further, § 250.204(a)(4) and (5) specifically mention these are responsibilities for the agencies in addition to § 250.204(a)(6) requiring a “knowledge management process to ensure continuity in knowledge sharing.” As noted in Executive Order 14356, *Ensuring Continued Accountability in Federal Hiring*, 90 FR 48387 (Oct. 20, 2025), the Annual Staffing Plan is intended as a dynamic implementation document that is reviewed and updated on an ongoing basis, not a rigid annual snapshot. The final rule also clarifies that the Annual Staffing Plan must be developed on a timeline consistent with the agency’s strategic planning and budget formulation cycle under the OMB Circular A–11, Part 6, so that workforce planning, resource allocation, and performance planning decisions are coordinated rather than sequenced.

Administrative Burden of Quarterly Reviews

Comments 0003, 0005, and 0002 raised concerns about the administrative burden created by the proposed Quarterly Staffing Plan Performance Reviews. Comment 0003 argued that forcing human resources staff into quarterly review cycles diverts resources from substantive recruiting and onboarding. Comment 0005 stated that, given recent reductions in Federal agency capacity, agencies do not have the capacity to absorb additional compliance requirements. Comment 0002 argued the rule lacks a cost-benefit analysis demonstrating that the benefits of additional oversight requirements outweigh the costs.

OPM acknowledges these concerns but does not agree that the final rule adds a review requirement. Agencies are already required to conduct quarterly human capital reviews. Current § 250.207 requires HRStat quarterly data-driven reviews of human capital performance, led by the Chief Human Capital Officer in coordination with the agency Performance Improvement Officer. This rule does not create a new review cycle; it modifies the existing one, reorienting the quarterly review from HRStat reporting to implementation of the agency’s Annual Staffing Plan.

The Expected Impact section of this preamble addresses the cost-benefit analysis. The quarterly cadence is a necessary component of effective human capital oversight and is consistent with the Government Performance and Results Act Modernization Act of 2010 performance review framework, which agencies already administer on a quarterly basis through their Performance Improvement Officers. By consolidating the Human Capital Operating Plan, Human Capital Review, and HRStat quarterly review into a single framework, the final rule reduces required reporting rather than adding to it.

The existing HRStat process has been used to monitor, evaluate, and align agency strategic planning and evaluation systems as part of the Human Capital Framework. OPM intends for the Quarterly Staffing Plan Performance Reviews to build upon existing agency review processes rather than create duplicative burdens, and OPM will issue guidance to minimize compliance overhead. The agency Performance Improvement Officer supports the quarterly priority progress reviews that 31 U.S.C. 1121(c) requires of the agency head and Chief Operating Officer, and current § 250.207 already requires the Chief Human Capital Officer to conduct the quarterly human capital review in coordination with that same Performance Improvement Officer. The two processes therefore already share a participant and a quarterly cadence. The final rule accordingly makes clear that agencies may integrate the Staffing Plan Performance Review into their existing quarterly reviews where practicable, rather than convening a separate meeting.

Comment 0009 supported that integration but recommended that OPM specify a minimum standing agenda allocation for workforce metrics so that workforce issues are not crowded out by competing agenda items. OPM acknowledges the concern and may address these matters in implementation guidance.

Workforce Recruitment, Retention, and Morale

Comments 0002, 0003, and 0005 asserted that the rule will harm workforce recruitment, retention, and employee morale. Comment 0002 argued that the changes would negatively affect employee retention and hiring efforts, resulting in higher costs and lower-quality candidates. Comment 0003 predicted that year-to-year staffing planning would trigger “severe retention crises and skill gaps” and warned that a workforce that feels

silenced and ignored will suffer from low morale, driving talented civil servants out of public service. Comment 0006 likewise emphasized that workload and morale measures should inform staffing plans, observing that persistent, widespread unreasonable workloads can lead to errors and mishaps, including in high-stakes environments such as emergency response.

OPM has considered these comments carefully and does not agree that the rule will impair the Government’s ability to recruit and retain a high-quality workforce; OPM expects the opposite effect. The final rule requires each agency to direct its hiring to its highest-need positions, to address skills gaps, and to enable succession planning (§ 250.205(b)(2)), and it synchronizes workforce planning with the budget formulation cycle so that agencies can commit to hiring decisions when resources are known rather than after opportunities have passed.

Slow, diffuse, and poorly prioritized hiring—not disciplined planning—is what costs agencies top candidates: applicants who wait months for a certificate or a final offer frequently accept employment elsewhere. A staffing plan that concentrates hiring capacity on the positions agencies need most and is reviewed quarterly for progress should shorten that cycle and improve both the speed and the quality of Federal hiring. OPM’s recently issued *Guidance on Annual Staffing Plans* implements this approach for the FY 2027 cycle, directing agencies to conduct bottom-up workforce planning that reserves billets and budget for mission-critical, technology, and early-career hires; to recruit through pooled hiring actions and shared certificates; and to assess every external hire using a validated technical or alternative assessment rather than a self-assessment questionnaire alone—measures aimed squarely at improving the speed and quality of Federal recruitment. OPM, *Guidance on Annual Staffing Plans* (July 30, 2026), <https://www.opm.gov/chcoc/latest-memos/guidance-on-annual-staffing-plans.pdf>.

The commenters’ contrary predictions that the rule will hurt recruitment rest largely on the premise that the rule adds administrative burden. But, as explained above, the rule consolidates three overlapping requirements into a single framework and permits integration with existing quarterly reviews.

Nor does the rule diminish the Government’s attention to morale. The final rule retains a Governmentwide requirement that every agency survey its

employees annually, and the prescribed items measure conditions closely tied to morale and engagement—whether employees feel empowered, whether coworkers cooperate, whether meaningful distinctions in performance are recognized, whether supervisors provide career-development feedback, and whether employees can disclose suspected wrongdoing without fear of reprisal, a core measure of employee voice. Agencies remain free, and are encouraged, to field additional engagement, satisfaction, workload, and morale items tailored to their workforces (and to conduct additional “pulse” surveys throughout the year), and OPM’s Employee Survey Playbook¹ provides model content and methodological support. The rule does not silence employee feedback; it places responsibility for gathering and acting on that feedback with the agency leaders best positioned to respond to it.

Finally, OPM notes that Annual Staffing Plans must include metrics for evaluating current and future workforce and staffing needs (§ 250.205(b)(1)), and that OPM and OMB will review implementation annually through the Annual Staffing Review. In response to comment 0009’s recommendation that OPM maintain a stable set of core human capital metrics that persists across administrations, OPM notes that its Guidance on Annual Staffing Plans specifies the core hiring and workforce measures agencies must address in preparing their FY 2027 Annual Staffing Plans. OPM, *Guidance on Annual Staffing Plans* (July 30, 2026), <https://www.opm.gov/chcoc/latest-memos/guidance-on-annual-staffing-plans.pdf>. That guidance directs agencies to identify mission-critical occupations and skills gaps, together with plans for closing them, and to include in each plan a detailed hiring forecast projecting—by quarter and by mission area or component—total hires, external hires versus internal placements, mission-critical occupation hires, technology hires, and early-career hires, measured against standing Governmentwide targets. Agencies must report performance against each target in their quarterly updates and must justify, and set a corrective trajectory for, any projected variance; OPM and OMB will track progress through the Quarterly Staffing Plan Performance Review and Annual Staffing Review processes. This guidance illustrates how the planning cadence reflected in this rule can support multi-year workforce

planning efforts based on core human capital metrics.

CHCO Visibility, Oversight, and Control

Comment 0009 expressed strong support for the proposed requirement at § 250.204(e) that agencies ensure their internal delegations, organizational structure, policies, and technological systems give the CHCO sufficient visibility, oversight, and control to carry out statutory functions under 5 U.S.C. 1401 and 1402. The commenter noted this has been a persistent, longstanding problem, as confirmed by Government Accountability Office (GAO) reporting. The commenter expressed concern, however, that the provision as drafted “states an obligation without a mechanism for verifying compliance” and recommended that the final rule direct OPM to require an annual, agency-head-certified attestation confirming that the CHCO has the required visibility, oversight, and control, with any gaps identified and a remediation timeline attached.

Comment 0006 similarly recommended that the final rule require CHCO coordination with the CFO, COO, and senior leadership to ensure the CHCO has the organizational standing to perform the functions contemplated by the rule.

Comment 0003 raised a concern in the opposite direction, arguing that giving the CHCO top-down singular control over all human capital functions risks creating an environment detached from individual component needs and stripping sub-agencies of the operational flexibility needed to address local staffing challenges.

OPM agrees with Comment 0009 that the CHCO visibility requirement requires a compliance verification mechanism to be effective. OPM has added a requirement to § 250.206 that, as part of each Annual Staffing Review, agencies submit an agency head certification confirming that the CHCO has the visibility, oversight, and control required under § 250.204(e), and that any identified gaps are documented with a remediation timeline. This addition provides the accountability mechanism the commenter identified while preserving agency flexibility in how CHCO authority is structured internally.

OPM does not agree that strengthening CHCO authority necessarily undermines sub-agency operational flexibility. The final rule preserves the agency’s ability to delegate authorities consistent with the CHCO’s oversight responsibilities and does not prohibit sub-agencies from maintaining

operational human capital functions appropriate to their missions.

Political-to-Career Conversion Safeguards (“Burrowing In”)

Comment 0010 expressed general support for the proposed rule and offered targeted recommendations to address political-to-career conversions. The commenter recommended that: (1) § 250.203 be amended to require agency human capital management systems to include screening for political-to-career conversions, with OPM pre-approval required before such actions are finalized; (2) § 250.204 be amended to require agencies to certify that no political influence occurred and that OPM requirements for political-to-career conversions were followed, including for reassignments and details; (3) § 250.205 be amended to require agencies to review hiring actions involving political appointees and assess whether details, transfers, and reassignments were consented to and properly justified; (4) § 250.206 be amended to require documentation of any attempts to support political-to-career conversions; and (5) a new § 250.210 be added to require written employee consent for details over 60 days, justification for involuntary details, and CHCO approval for directed reassignments.

OPM appreciates the comment’s detailed recommendations and shares the concern that improper political-to-career conversions undermine merit system principles. The safeguards the commenter describes, however, are already in place and are administered by OPM outside this part.

Agencies must obtain OPM’s approval before appointing a current or recent political appointee to a permanent competitive service, non-political excepted service, or career Senior Executive Service position, including time-limited appointments that would permit later noncompetitive conversion. For this purpose, a recent political appointee is an individual who held a covered political appointment within the preceding five years. OPM administers this pre-appointment review; agencies submit a pre-appointment checklist, and OPM examines the action for compliance with merit system principles and applicable civil service law before the appointment may be made. This review operates against the background requirements of 5 U.S.C. 2301 (merit system principles), 5 U.S.C. 2302 (prohibited personnel practices), 5 U.S.C. 3317 and 3318 (certification and selection in the competitive service), Civil Service Rules 4.2 and 7.1 (5 CFR

¹ Employee Survey Playbook, U.S. Office of Personnel Management, <https://www.opm.gov/chcoc/latest-memos/employee-survey-playbook.pdf>.

4.2, 7.1), 5 CFR part 317 (career SES appointment procedures), and OPM's memorandum to Chief Human Capital Officers, Political Appointees and Career Civil Service Positions (Dec. 30, 2022), https://www.opm.gov/chcoc/transmittals/2022/Political%20Appointees%20and%20Career%20Civil%20Service%20Positions_508.pdf. OPM also conducts ongoing oversight of completed conversions under 5 U.S.C. 1104 and 5 CFR 5.2.

Recommendations (1) through (4) would restate these existing obligations within part 250's human capital planning and evaluation provisions. OPM declines to do so. The pre-appointment review is already mandatory and Governmentwide: no agency may appoint a current or recent political appointee to a covered career position without OPM's advance approval, and OPM examines each proposed action for evidence of political influence before it may proceed. Layering a duplicative planning-stage approval or certification on top of that review would add process without adding protection. OPM also notes that the Annual Staffing Review and Quarterly Staffing Plan Performance Review framework adopted in this final rule will give OPM and OMB regular, structured visibility into agency hiring patterns, complementing the conversion-specific review described above. Agencies remain fully bound by the pre-appointment review described above, and OPM will continue to enforce it.

Recommendation (5) is outside the scope of this rulemaking. It would establish new requirements governing employee consent to details, justification for involuntary details, and approval of directed reassignments. The proposed rule did not propose to regulate details or reassignments; those matters are governed by 5 U.S.C. 3341 and 5 CFR parts 300 and 335, and the public was not on notice that this rulemaking might address them. OPM therefore does not adopt recommendation (5) in this final rule.

Strategic Hiring Committee and Merit System Principles

Comments 0005 and 0007 raised legal and policy objections to the proposed Strategic Hiring Committee. The comments argued that centralizing career hiring decisions in political appointees under the proposed Strategic Hiring Committee violates 5 U.S.C. 2301(b)(2), 2301(b)(8)(A), 2302(b)(1)(E), and 2302(b)(3), which prohibit consideration of political affiliation in competitive and excepted service hiring.

The commenters further objected that undefined hiring criteria such as "patriotism" provide insufficient guardrails against partisan favoritism. Comment 0005 further characterized the Strategic Hiring Committee as political interference in career agency operations.

Comment 0006 did not specifically address the Strategic Hiring Committee but emphasized broadly that modernization of strategic human capital management must reinforce, not erode, the merit system principles that have long guided the Federal civil service. Comment 0009 supported the requirement that the CHCO serve on the Committee alongside the Deputy Secretary or equivalent and recommended that the final rule also require the Committee to solicit written input from the relevant career senior executive with programmatic responsibility before acting on a position within that executive's chain of command.

OPM takes seriously its obligation to administer the merit system in compliance with applicable statutes and disagrees that the Strategic Hiring Committee is inconsistent with those obligations. The Committee is not a creation of this rule. Executive Order 14356 directs each agency to maintain a Strategic Hiring Committee through which agency leadership reviews and approves the creation of positions and hiring actions; this rule incorporates that requirement into part 250 so that it operates alongside, rather than apart from, the agency's other human capital planning obligations. The Committee's function is accordingly to oversee the agency's hiring program—to ensure that the agency's hiring is directed to its highest-need positions and is consistent with its mission needs and its Annual Staffing Plan.

This rule confers no examining authority on the Committee. Rating, ranking, and certification of eligibles are governed by 5 U.S.C. 3317 and 3318 and 5 CFR part 332 and are carried out under the agency's examining authority, and this rule makes no change to those authorities or to the requirement that an appointing official select from among the eligibles properly certified under them. That an individual official may separately take part in an assessment process under those existing authorities—for example, as a subject-matter expert—is a function of that official's role in the examining process, not of Committee membership, and this rule neither creates nor enlarges any such role. The commenters' central premise—that the rule centralizes career hiring decisions in a manner that

displaces competitive examination—is therefore incorrect.

That senior agency officials participate in and are accountable for the agency's hiring decisions is neither novel nor unlawful. Nothing in the merit system requires that appointment decisions be insulated from agency leadership. To the contrary, sustained involvement by senior leadership is a hallmark of effective human capital management. GAO has long reported that the personal commitment and accountability of an agency's top leaders is among the most consistent predictors of progress in strategic human capital management—and that its absence is a central reason the area has remained on the High-Risk List since 2001. *See* GAO, *A Model of Strategic Human Capital Management*, GAO-02-373SP (Mar. 15, 2002) (identifying the "sustained commitment by agency leaders" as the first cornerstone of strategic human capital management), <https://www.gao.gov/products/gao-02-373sp>; GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, GAO-19-157SP (Mar. 6, 2019) (leadership commitment is the first of the five criteria GAO uses to assess progress toward removal from the High-Risk List), <https://www.gao.gov/products/gao-19-157sp>; GAO-25-107743, <https://files.gao.gov/reports/GAO-25-107743/index.html>.

The Chief Human Capital Officers Act likewise places workforce strategy with a senior official answerable to agency leadership precisely because staffing decisions are inseparable from decisions about mission, budget, and organizational design. *See* 5 U.S.C. 1401 (the head of each agency shall appoint or designate a Chief Human Capital Officer to "advise and assist the head of the agency and other agency officials" in workforce management). Executive Order 14356 and OPM's Guidance on Annual Staffing Plans carry that principle forward: workforce planning is built from the bottom up by the managers closest to the work and then validated by the Strategic Hiring Committee and the CHCO, so that the officials accountable for the agency's mission and resources are also accountable for the staffing decisions that determine whether the mission can be met. Hiring executed without leadership engagement produces the very pathologies commenters elsewhere decry—diffuse priorities, unfilled mission-critical positions, and hiring disconnected from budget reality.

An applicant or employee who believes a Committee member has discriminated on the basis of political

affiliation, or who has granted a preference or advantage not authorized by law, may seek corrective action through the Office of Special Counsel under 5 U.S.C. 1214, and the Merit Systems Protection Board may discipline officials who commit prohibited personnel practices under 5 U.S.C. 1215. Civil Service Rule IV (5 CFR 4.2) independently prohibits inquiry into the political affiliation of applicants and eligibles and any discrimination on that basis.

As to the concern regarding undefined criteria such as “patriotism,” this rule prescribes no qualification, suitability, or selection criteria for individual hiring actions. Qualification requirements continue to be governed by 5 CFR part 300, subpart A, and the qualification standards OPM issues thereunder, and suitability and fitness determinations continue to be governed by 5 CFR part 731. This rule confers on the Strategic Hiring Committee no authority to establish or alter either.

Comment 0007 also pointed to materials outside this rulemaking—including OPM’s Merit Hiring Plan, related guidance on application essay questions, and pending litigation concerning one such question—as evidence that the Committee structure will facilitate politicized hiring. OPM affirms that no hiring criterion, however labeled, may be applied to prefer or exclude a candidate on the basis of political affiliation, and an official who does so commits a prohibited personnel practice under 5 U.S.C. 2302 regardless of the organizational setting—a hiring committee or otherwise—in which the violation occurs. The Committee exists to ensure that hiring is directed to mission needs and that agency leadership is involved in and accountable for the agency’s workforce planning. OPM disagrees that this structure will facilitate politicized hiring. If anything, a standing committee whose decisions are documented against a published Annual Staffing Plan and reviewed by OPM and OMB through the Annual Staffing Review makes improper influence easier to detect, not harder: structured, recorded decisions tied to pre-established mission criteria leave a trail, while diffuse and undocumented hiring processes offer far more cover for favoritism. This rule alters none of the prohibitions, or the remedies for their violation, discussed above.

Finally, OPM does not agree that agencywide oversight of hiring is in tension with the merit system. Directing scarce hiring capacity to an agency’s highest-need positions is a core management responsibility, and 5

U.S.C. 1401 and 1402 contemplate that the Chief Human Capital Officer will exercise that kind of oversight. The Committee’s required composition—the Deputy Secretary or equivalent and the chief of staff to the agency head, together with the Chief Human Capital Officer—follows from Executive Order 14356, which requires that the deputy agency head participate, and from the human capital leadership responsibilities the Chief Human Capital Officers Act assigns to the CHCO. OPM notes that it proposed to add the regulatory provisions related to the Strategic Hiring Committee to implement E.O. 14356, which states: “The Strategic Hiring Committee shall include the deputy agency head and the chief of staff to the agency head, along with such other senior officials as the agency head may designate.” The final regulatory text corrects the composition of the Strategic Hiring Committee to include the chief of staff to the agency head in accordance with E.O. 14356. OPM acknowledges that the proposed regulatory text did not list the chief of staff to the agency head as a required Committee member. This revision does not create a new substantive obligation; it conforms the regulation to the Committee composition that E.O. 14356 already requires and under which agencies are already operating. Because the change makes no operative legal change and simply allows the regulation to reflect existing requirements, OPM finds, pursuant to 5 U.S.C. 553(b)(B), that good cause exists to finalize this conforming revision without additional notice and opportunity for comment, which would be unnecessary. It pairs mission and resource accountability with the agency’s senior human capital official. In any event, all applicable requirements under 5 U.S.C. chapters 23 and 33 and other statutes and regulations still apply to all hiring practices and decisions.

OPM has also considered comment 0009’s recommendation that the Committee be required to solicit written input from the relevant career senior executive before acting on a position within that executive’s program area. OPM agrees that program-level expertise is important to sound hiring decisions but declines to prescribe mandatory Committee procedures in regulatory text. The rule establishes the Committee’s minimum composition and function; it does not limit the officials a Committee may consult, and nothing in the rule precludes a Committee from soliciting written input from career senior executives, program managers, or subject-matter experts. OPM expects

Committees to draw on that expertise as a matter of course and will address recommended practices for Committee operations in implementation guidance.

Workforce Diversity and Merit System Principles

Comments 0007 and 0005 opposed the proposed rule’s removal of diversity references from the regulations. Comment 0007 argued that diversity policies are codified in statute—specifically, 5 U.S.C. 2301(b)(1), which establishes as a merit system principle that the Federal workforce be drawn “from all segments of society.” The commenter further argued that affirmative action requirements in 5 U.S.C. 3102 and 3112 and 29 U.S.C. 791(b) cannot be overridden by OPM rulemaking, and that OPM’s rulemaking authority under 5 U.S.C. 1103(a)(5)(A) and 1401(1), (2) expressly constrains OPM to act consistent with those statutory provisions.

OPM does not accept the premise that the statutes the commenters cite establish “diversity” requirements of the kind reflected in the regulatory language being removed. The merit system principle at 5 U.S.C. 2301(b)(1) provides that recruitment should be from qualified individuals from all segments of society, and that selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition. That is a command to recruit broadly and to select on merit alone; it neither requires nor permits agencies to pursue demographic representation targets or to consider race, sex, or other protected characteristics in personnel decisions, and it therefore provides no statutory foundation for the regulatory references being removed. The provisions the commenters cite concerning individuals with disabilities and disabled veterans are specific statutory obligations that operate independently of part 250 and bind agencies by their own force; part 250 need not restate them for them to apply. This rule makes no change to § 250.204(a)(4), which continues to require that agencies recruit, hire, develop, and retain an effective workforce, especially in the agency’s mission-critical occupations. Nothing in this rule alters agency obligations under 5 U.S.C. 3102 (readers, interpreters, and personal assistants for employees with disabilities), 5 U.S.C. 3112 (noncompetitive appointment of disabled veterans), or 29 U.S.C. 791(b) (affirmative action for individuals with disabilities).

As proposed, the final rule removes the references to a “diverse” workforce

in § 250.203(b) and (c). As OPM explained in proposing that removal, the existing references to a “diverse” workforce may be read to suggest that agencies are required or permitted to take race or other protected characteristics into account in hiring, evaluation, and promotion decisions, and OPM proposed to remove that unnecessary and potentially misleading language. 91 FR 40435, 40438 (July 2, 2026).

The removal is also consistent with Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, 90 FR 8339 (Jan. 29, 2025). Requirements that agencies comply with applicable equal employment opportunity and merit system principles, including nondiscrimination, remain in force under 5 U.S.C. 2301 and 42 U.S.C. 2000e–16. The commenters’ objections identify statutory requirements that this rule leaves fully intact; they do not identify a statute that compels the particular regulatory language being removed. OPM has considered those objections and is not persuaded to depart from the proposal. Other references to executive-driven diversity, equity, and inclusion (DEI) programs that are not compelled by statute are removed on the same basis.

OPM is not eliminating any statutory obligation in this final rule. The final rule is consistent with a merit-based, nonpartisan civil service that draws from all segments of society as Congress has required.

Annual Employee Surveys

The single most frequently raised theme across the comments concerns OPM’s proposed changes to the annual employee survey, addressed in subpart C (§§ 250.302 and 250.303), and the discontinuation of the Federal Employee Viewpoint Survey. Six of the nine comments address this subject in some form (comments 0003, 0004, 0006, 0007, 0008, 0009), reflecting its evident importance to stakeholders.

The Federal Employee Viewpoint Survey (FEVS) is often conflated with the annual employee survey (AES) requirement set in section 1128 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, div. A, tit. XI (5 U.S.C. 7101 note), which requires each agency to conduct an annual survey covering two content areas. That statute directs OPM to prescribe survey questions by regulation, and this final rule modifies those prescribed questions. The FEVS was part of a larger effort by OPM to assess a variety of human capital topics, and OPM incentivized agencies to

participate in the FEVS by including the required AES items. By participating in the FEVS, agencies would meet their required survey obligation.

In 2026, after serious consideration, OPM decided to discontinue the Governmentwide administration of FEVS, as it was felt the survey had become a check-the-box activity and did not yield actionable insights sufficient to justify the cost and burden it imposed. (OPM paused the survey for 2025 to allow agencies to focus on other workforce priorities; see OPM, 2025 Federal Employee Viewpoint Survey and Compliance with Recent Executive Orders (Feb. 28, 2025), <https://www.opm.gov/chcoc/transmittals/2025/Memo%20on%20FEVS%20ReportsFINAL.pdf> (delaying the 2025 survey); OPM, Cancellation of 2025 OPM Federal Employee Viewpoint Survey (Aug. 15, 2025), <https://content.govdelivery.com/accounts/USOPM/bulletins/3ede04d>).

FEVS did not provide enough meaningful assessment as a general purpose, one-size-fits-all instrument, nor did it have enough actionable feedback or make a real impact for employees to be worthwhile. OPM’s reasoning is set out more fully in its survey guidance and public statements. OPM, *Annual Employee Survey Administration Requirements—2026 and Beyond* (July 9, 2026), <https://www.opm.gov/chcoc/latest-memos/annual-employee-survey-administration-requirements-2026-and-beyond.pdf>; OPM, *Measure What Matters*, Secrets of OPM (July 1, 2026), <https://usopm.substack.com/p/measure-what-matters>.

As OPM has explained, it believes strongly in well-designed employee engagement surveys—surveys that help managers understand whether the organization is aligned around the right objectives, whether employees understand how their work contributes to those objectives, whether managers hold team members accountable, reward excellence, and develop top performers, and whether employees can report wrongdoing without fear of reprisal. But a single, centrally administered annual instrument is poorly suited to those ends: objectives and priorities shift during the year, a “one and done” survey becomes a checkbox exercise, and organizations as large and managerially distributed as Federal agencies are not served equally well by one Governmentwide ritual. Survey data are actionable only when collected at the right level of detail, reviewed by the managers closest to the work, and used to diagnose and correct real problems—which requires agencies to own their

surveys. The prescribed common questions preserve OPM’s visibility into Governmentwide trends so that systemic challenges can still be identified centrally.

Core Survey Question Set

Several organizational comments (0006, 0007, 0008, 0009), along with comment 0003, objected to reducing the number of items from sixteen questions to ten, and several—most pointedly comment 0007 and comment 0008—argued this violates the statutory mandate that the survey address specific topics, including work environment, rewards and recognition, and professional development.

It is OPM’s position that the statute underlying the annual employee survey requires OPM to prescribe common questions “to allow comparison across agencies” and requires that results be made public. It does not require that OPM itself administer every agency’s survey instrument, dictate a single Governmentwide field period, or otherwise control agency-level survey logistics. The final rule preserves the statutorily required mechanism for comparability—a common core of required questions appearing on every agency’s survey—while returning survey administration to the agencies that are closest to their own workforce populations and best positioned to tailor supplemental content to their missions. This is consistent with, not contrary to, the statutory design.

For additional context, the items required in regulation have changed before; in December 2016 the regulation was modified to change the number from 45 to 16 items. This reduction in the number of required items allowed the larger FEVS to adapt and meet new needs. The survey, either the FEVS or the AES items, was never meant to be permanent, but allowed to change as the workforce and workplace needed. While OPM acknowledges there are benefits to being able to trend results over time, there are also benefits to refreshing the content to meet the current needs.

Commenters contended that the proposed survey items do not meet the requirements of the statute regarding content areas that must be addressed (comments 0006, 0007) and that some of the items have some technical faults in their design like unclear wording or response choices (comments 0004, 0007, 0008). OPM respectfully disagrees.

Section 1128(a) requires each agency to conduct an annual survey of its employees—expressly “including survey questions unique to the agency and questions prescribed under subsection (b)” —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 organizational mission; opportunity for professional development and growth; and opportunity to contribute to achieving organizational mission.

The content areas Congress enumerated therefore attach to the agency's survey as a whole, which the statute defines to include the agency's own questions, and not solely to the subset of items OPM prescribes by regulation. Subsection (b) directs OPM to prescribe questions that should appear on all agency surveys "in order to allow a comparison across agencies." It does not direct OPM to prescribe a separate item for each content area, to prescribe any particular number of items, or to require that an item use the word "satisfaction" or a satisfaction response scale. Section 250.302(a)(1) preserves each agency's ability to include questions unique to the agency, and the prescribed items accordingly operate as a floor rather than a ceiling.

The prescribed items nonetheless reach each of the statutory content areas. Leadership and management practices that contribute to agency performance are addressed by items (i), (v), (ix), and (x); leadership policies and practices by items (i), (iv), and (v); the work environment by items (ii) and (viii); rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission by item (iii); opportunity for professional development and growth by item (iv); and opportunity to contribute to achieving organizational mission by items (vi) and (vii). Assessing these conditions through agreement-scaled items is an accepted measurement practice and is consistent with the approach used for the Annual Employee Survey items as administered through the FEVS. An employee's reported agreement that differences in performance are recognized in a meaningful way, or that a supervisor provides ongoing feedback to help the employee succeed and progress in a career, is a direct measure of that employee's assessment of the agency in the corresponding content area. OPM does not read the statute to require that a content area be assessed only by an item that recites the statutory phrasing.

As to the technical concerns about item wording and response options, OPM has considered each of them and

concludes that they reflect differences in professional judgment about survey design and item construction rather than defects that would prevent the items from assessing the statutory content areas. Agencies retain discretion to supplement the prescribed items where they determine that additional or differently constructed items would better serve their workforce, and OPM will continue to support agencies through guidance such as the Employee Survey Playbook (OPM, *Employee Survey Playbook: A Guide for Federal Agencies* (July 2026), <https://www.opm.gov/chcoc/latest-memos/employee-survey-playbook.pdf>) and OPM's annual survey administration requirements. OPM, *Annual Employee Survey Administration Requirements—2026 and Beyond* (July 9, 2026), <https://www.opm.gov/chcoc/latest-memos/annual-employee-survey-administration-requirements-2026-and-beyond.pdf>. OPM is making no changes to the proposed survey items in this final rule.

Survey Methodology, Timing, and Public Disclosure

Some comments claim that a smaller survey or distributed survey effort would be detrimental, or would lack control and standardization (comments 0003, 0006, 0008). As mentioned, part of the reason the FEVS was discontinued was because its one-size-fits-all approach makes it difficult for agencies to assess their own needs without also doing their own survey in addition to participating in the FEVS.

In fact, it was this need for customization that led three large agencies to discontinue participating in the FEVS altogether in years prior to 2025—National Aeronautics and Space Administration, the Department of Veterans Affairs, and the Securities and Exchange Commission all decided to do their own surveys as the FEVS could not meet their needs. While the FEVS did allow agencies to add their own agency-specific survey items, the number of those items was limited and had to be asked to the entirety of the agency, which may not be appropriate if only a portion of the agency needed to be addressed.

By returning the responsibility of surveying their employees to the agency and decreasing the total number of survey items required, plus giving options for the methodologies that best suits them, agencies will be able to craft survey items and whole surveys that better serve their specific needs. Using these flexibilities, agencies can continue or even expand on content that the FEVS promoted, such as assessing

employee engagement. OPM will continue to assist agencies by providing guidance and expert advice to meet their obligations, such as the Employee Survey Playbook which provides information and considerations for administering a proper survey.

Comment 0008 objected that revised § 250.303(a) removes the current regulation's enumerated categories of required public disclosure and permits each agency to determine the specific content of its public release, which the commenter argued could allow selective or incomplete reporting. OPM does not intend, and the final rule does not permit, disclosure that misrepresents survey results. The governing statute requires that the results of the annual survey be made available to the public, and § 250.303(a) carries that command forward: each agency must make the results of its annual survey available to the public and post them on its website, subject only to the narrow national security exception stated in the rule.

OPM will address the content of public releases—including publication of the survey instrument, response rates, and item-level results for the prescribed questions—in implementation guidance, and agencies must submit complete results to OPM and OMB under § 250.303(c), which preserves centralized oversight and enables OPM to publish Governmentwide comparisons. OPM has concluded that this combination of a statutory disclosure floor, annual administration requirements, and centralized reporting better accommodates variation in agency size and structure than a single enumerated list, and OPM therefore declines to retain the prior list in regulatory text.

Comment 0008 also expressed concern that agency-by-agency administration could weaken respondent confidentiality and, with it, employee trust and candor, particularly at small components. OPM agrees that confidentiality is essential to reliable measurement. The Employee Survey Playbook addresses anonymity, confidentiality, minimum reporting thresholds, and data-handling practices, and OPM's annual administration requirements will continue to set confidentiality expectations for agency surveys. Agencies also remain bound by the Privacy Act of 1974, 5 U.S.C. 552a, in collecting and maintaining survey records. OPM will monitor response rates across agencies and will revisit these safeguards in future administration requirements if participation data indicate an erosion of employee trust.

Comments 0006 and 0009 recommended that OPM publish a bridge or crosswalk analysis relating the prior sixteen prescribed items to the ten items adopted in this final rule, so that agencies can maintain trend analysis across the transition, and comment 0009 further recommended adding a prescribed item measuring perceived pathways into senior executive positions. OPM agrees that measurement continuity has value and will publish a crosswalk discussing the relationship between retiring and incoming items as part of its implementation guidance. OPM declines to add an eleventh prescribed item in this final rule; an agency whose leadership pipeline warrants it may add such an item as an agency-specific question, and OPM will consider leadership-pipeline content in future updates to the prescribed set.

Comment 0008 further objected that OPM guidance issued during this rulemaking directed agencies to implement elements of the proposed framework for the 2026 survey cycle before a final rule took effect. The annual survey obligation rests on each agency by force of section 1128 regardless of who administers the instrument, and OPM's decision to discontinue centralized administration of the FEVS was a programmatic decision committed to OPM's discretion; it did not require rulemaking. OPM confirms that agencies remain bound by the survey regulations in effect at the time a survey is administered, and this final rule operates prospectively from its effective date.

Conforming Amendments

As proposed, OPM is making conforming amendments to 5 CFR part 250 as reflected in the regulatory text below. References to the Human Capital Operating Plan (HCOP), Human Capital Reviews (HCR), and HRStat quarterly reviews are replaced or consolidated consistent with this final rule. Cross-references within part 250 are updated accordingly. Additionally, OPM proposed the revised strategic human capital planning and reporting processes to implement Executive Order 14356, which applies to "all executive departments and agencies." Although the proposed rule explained the purpose and scope of the proposed revisions in the preamble, OPM did not adjust 5 CFR 250.201, *Coverage and purpose*, and is now making a conforming edit to align Subpart B with the agencies to which E.O. 14356 applies. The final rule revises § 250.201 to apply to agencies covered by 5 U.S.C. 306(f), which is the

same population of agencies already submitting Annual Staffing Plans to OPM and OMB under E.O. 14356. OPM acknowledges that this revision to § 250.201 was not included in the proposed regulatory text. The revision does not make any operative legal change or impose a new substantive obligation. It simply allows the regulation to reflect the existing requirements of E.O. 143566 and the scope the proposed rule described. OPM therefore finds, pursuant to 5 U.S.C. 553(b)(B), that good cause exists to finalize this conforming revision without additional notice and opportunity for comment, which would be unnecessary.

Expected Impact of This Rulemaking

A. Statement of Need

OPM issues this rule pursuant to 5 U.S.C. 1103(a)(5), 1103(c), 1401, and 1402, and, as to subpart C, section 1128 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, div. A, tit. XI (5 U.S.C. 7101 note). Three deficiencies warrant action. The Human Capital Operating Plan, Human Capital Reviews, and HRStat quarterly reviews overlap in content and are produced on schedules unsynchronized with the budget and performance cycles under OMB Circular A–11; GAO has designated strategic human capital management a high-risk area since 2001, and the area remains on GAO's High-Risk List as of 2025. GAO, *High-Risk Series: An Update*, GAO–01–263 (Jan. 2, 2001), <https://www.gao.gov/products/gao-01-263>; GAO, *High-Risk Series: Heightened Attention Could Save Billions More and Improve Government Efficiency and Effectiveness*, GAO–25–107743 (Feb. 2025). Chief Human Capital Officers frequently lack the authority that 5 U.S.C. 1401 and 1402 presuppose, and the current regulations supply no means of verification. GAO, *Human Capital: Strategies to Help Agencies Meet Their Missions in an Era of Highly Constrained Resources*, GAO–14–168, at 10–11 (May 7, 2014), <https://www.gao.gov/products/gao-14-168>. And the annual survey framework no longer serves its statutory purpose: the statute requires common questions permitting comparison across agencies, not a single Governmentwide instrument, and the Federal Employee Viewpoint Survey grew too long and too general to be useful before OPM discontinued it in 2026.

OPM received nine comments, none identifying a basis for withdrawal, but several identifying respects in which the proposed rule addressed these

deficiencies imprecisely. In response, the final rule defines the Annual Staffing Plan as the operational workforce plan for an agency's strategic human capital strategy rather than a substitute for it (§ 250.202), ties its development to the OMB Circular A–11, Part 6 cycle (§ 250.205(a)(1)), and permits integration of quarterly review into existing reviews under the Government Performance and Results Act Modernization Act of 2010 (§ 250.207). Because comment 0009 correctly observed that the proposed CHCO provision stated an obligation without a means of verifying compliance, OPM adopts in this final rule, in response to that comment, an agency-head certification identifying any gaps in CHCO authority with a remediation timeline (§ 250.206), as a means of verifying compliance with proposed § 250.204(e), which was itself subject to notice and comment, and requires coordination with the Chief Financial Officer, Chief Operating Officer, and senior leadership (§ 250.205), while leaving agencies discretion over internal structure.

Comments further warned that the proposed Strategic Hiring Committee and the proposed removal of diversity references could themselves conflict with merit system principles. The final rule confirms that the Committee's oversight of agency hiring is a governance and workforce-planning function, that the final rule confers no examining, rating, or certification authority on the Committee, and that its members remain subject to 5 U.S.C. 2301 and 2302 in connection with any personnel action they recommend or approve (§ 250.204(f)). The final rule also adopts, as proposed, the removal of nonstatutory references to a "diverse" workforce in § 250.203 and confirms that the removal does not disturb the statutory obligations that remain, including the merit system principle at 5 U.S.C. 2301(b)(1). As to political-to-career conversions, OPM declines to restate in part 250 obligations already imposed through OPM's existing pre-appointment review, and declines, as outside the scope of this rulemaking, the recommendation to prescribe Governmentwide consent and justification procedures for details and reassignments. OPM concludes that the deficiencies identified above warrant regulatory action and that the final rule addresses them while preserving merit system protections and agency flexibility.

B. Impact

The final rule consolidates duplicative human capital planning and

review requirements, reducing compliance burden on agency HR staff. The consolidation of the HCOP, HCR, and HRStat quarterly review into the Annual Staffing Plan, Annual Staffing Review, and Quarterly Staffing Plan Performance Review framework is intended to free CHCO offices to focus on substantive workforce management rather than compliance paperwork, as the Senior Executives Association recommended.

The strengthening of CHCO authority, including the new certification requirement, is expected to improve the visibility and effectiveness of agency human capital leadership—addressing a persistent gap documented by GAO.

C. Costs

This final rule affects Federal agencies subject to 5 CFR part 250. The consolidation of planning and review requirements is expected to reduce, not increase, ongoing administrative costs relative to the current framework by eliminating duplicative HCOP, HCR, and HRStat reporting. Implementation costs are expected to be modest and largely one-time, consisting of the work required to review and update agency delegations, policies, and procedures to align with the new framework. This rule affects over 80 Federal agencies, ranging from cabinet-level departments to small independent agencies. For purposes of this analysis, OPM assumes that the work will be performed by employees at the GS-14, step 5 level under the 2026 Washington, DC, locality pay table (\$163,104 annual locality rate; \$78.15 hourly locality rate), and that the total dollar value of labor, including wages, benefits, and overhead, equals 200 percent of the wage rate, for an assumed labor cost of \$156.30 per hour. OPM estimates that, in the first year following publication of this final rule, implementation will require an average of 100 hours per agency, resulting in estimated first-year costs of approximately \$15,630 per agency and approximately \$1,250,400 Governmentwide.

Comment 0009 stated that this estimate likely understates the resources agencies will need, particularly because agencies are implementing this rule during the same period as the Strategic Hiring Committee and Annual Staffing Plan requirements of Executive Order 14356 and the Merit Hiring Plan, and recommended a phased implementation with a transition year and dedicated training resources. OPM has considered that comment and retains its estimate as a reasonable central estimate while acknowledging uncertainty in both directions. Even if first-year

implementation burden were triple OPM's estimate—300 hours per agency—first-year costs of approximately \$46,890 per agency and \$3.8 million Governmentwide would remain modest and far below the threshold for a regulatory impact analysis.

OPM has also estimated ongoing costs. Preparing the Annual Staffing Plan, participating in the Annual Staffing Review, and conducting Quarterly Staffing Plan Performance Reviews are estimated to require approximately 120 hours per agency per year, or approximately \$18,756 per agency and \$1,500,480 Governmentwide under the same labor-cost assumptions. Those activities replace, rather than supplement, the Human Capital Operating Plan, Human Capital Review, and HRStat processes they consolidate, which OPM estimates required at least as many staff hours annually; the net ongoing effect is accordingly expected to be a modest reduction in administrative cost. Agencies will also assume responsibility for administering their own annual employee surveys. Those costs will vary with the administration approach each agency selects, are mitigated by OPM-provided guidance, templates, and the Employee Survey Playbook, and are offset by the discontinuation of agency-side coordination of the Governmentwide FEVS and of the centralized administration costs OPM previously incurred.

OPM does not anticipate that the final rule will impose significant new costs on agencies. The primary regulatory burden—Quarterly Staffing Plan Performance Reviews—builds on existing quarterly performance review obligations under the GPRA Modernization Act and is expected to reduce duplicative reporting.

D. Benefits

The final rule is expected to improve the efficiency and effectiveness of Federal human capital management by: (1) consolidating and streamlining planning and review requirements and synchronizing them with OMB Circular A-11 budget and performance planning timelines, freeing CHCO offices for substantive workforce management and eliminating duplication across planning, budgeting, and performance management activities; (2) strengthening CHCO institutional authority and accountability with a verifiable compliance mechanism; (3) better positioning agencies through a decentralized survey process to design and administer surveys because they understand their own missions,

structures, workforces, and management challenges, while a common set of required questions preserves the ability to track Governmentwide trends; and (4) aligning Federal human capital planning with Executive branch priorities while preserving the statutory obligations and merit system protections that govern Federal hiring.

These benefits are difficult to quantify with precision, but their potential scale is large relative to the rule's costs: Federal civilian personnel costs exceed \$300 billion annually, so even fractional improvements in time-to-hire, hiring quality, or retention of high performers in mission-critical occupations would yield benefits many times the implementation costs estimated above. The rule's expected recruitment and morale effects, and OPM's response to comments predicting harm in those areas, are discussed in the Workforce Recruitment, Retention, and Morale section of this preamble.

E. Regulatory Alternatives

An alternative to this rulemaking is to retain the current HCOP, HCR, and HRStat framework without consolidation. OPM considered this alternative but determined that the existing framework creates duplicative reporting that diverts CHCO office resources from substantive work. Retaining the current framework would also leave workforce planning unsynchronized with the strategic planning and budget formulation cycle under OMB Circular A-11 and with the Annual Staffing Plan process established by Executive Order 14356, forcing agencies to maintain two parallel planning vocabularies and documentation streams for the same activity. Nor has the status quo produced results: strategic human capital management has remained on GAO's High-Risk List for a quarter century under the existing regulatory architecture. OPM also considered a narrower variation—retaining the Human Capital Operating Plan while adjusting its timing and content requirements—and rejected it for the same reasons: incremental adjustment would preserve the duplication that is the central defect of the current framework.

Another alternative is to continue a centralized survey administration. OPM considered this alternative but determined that a decentralized administration positions agencies better by giving them the flexibility and customizability of administering their own surveys while incorporating the items OPM issues in regulation to ensure comparability across agencies. In

evaluating this alternative, OPM also considered the variant urged by several commenters: retaining centralized administration while shortening the instrument and expanding agency-specific supplements. That approach would preserve the cost of central administration and a single Governmentwide field period while still denying agencies control over timing, methodology, and level of reporting detail—the limitations that led the National Aeronautics and Space Administration, the Department of Veterans Affairs, and the Securities and Exchange Commission to leave the FEVS even before 2025. The final rule instead secures comparability through the common prescribed items and the centralized submission of complete results to OPM and OMB under § 250.303(c), while leaving administration with the agencies where the results must be acted upon.

Finally, OPM considered delaying the effective date or phasing the new framework in over multiple years, as comment 0009 recommended. However, OPM determined that a delayed effective date would postpone the benefits of consolidation without materially reducing transition costs, because agencies are already required to prepare Annual Staffing Plans under Executive Order 14356 regardless of when this rule takes effect.

F. Severability

If any provision of this rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section or sections and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Regulatory Compliance

A. Regulatory Flexibility Act

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

B. Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive

impacts, and equity). A regulatory impact analysis must be prepared for rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a “significant regulatory action” under section 3(f) of Executive Order 12866. This rule is not considered an Executive Order 14192 regulatory action because it imposes no more than de minimis costs.

C. Federalism

This regulation 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. Therefore, in accordance with Executive Order 13132, OPM has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, of \$100 million in 1995 dollars in any one year, updated annually for inflation. That threshold is currently approximately \$206 million. This rule applies only to Federal agencies and employees and therefore does not impose spending costs on State, local, or Tribal governments or the private sector.

F. Congressional Review Act

The Office of Management and Budget's Office of Information and Regulatory Affairs has determined this rule does not meet the criteria listed in 5 U.S.C. 804(2). In addition, this is a rule relating to agency management or personnel and does not come within the meaning of the term “rule” as used in 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

G. Paperwork Reduction Act

This rule contains a collection of information subject to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35. Section 250.302(a)(2) prescribes 10 Governmentwide

questions for annual employee surveys, and § 250.303(c) requires agencies to submit survey results to OPM and OMB. Under 5 CFR 1320.3(c)(3), a collection of information includes questions posed to employees of the United States where the results are to be used for general statistical purposes. OPM published a 60-day Paperwork Reduction Act notice (91 FR 40599, July 2, 2026) requesting comment on a new common form agencies may use for this collection titled *Annual Employee Survey*. OPM subsequently published a 30-day notice (91 FR 58921, September 17, 2026) concurrent with OMB review. OMB reviewed and approved the information collection and has assigned OMB control number 3206–0284. Additional information regarding this collection of information—including all background materials—can be found at: <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter the title of the collection or the OMB control number. The certification requirement added to § 250.206 is an internal agency management function and does not constitute information collection subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 250

Authority delegations (Government agencies), Government employees.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

Jerson Matias,
Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR part 250 as follows:

PART 250—PERSONNEL MANAGEMENT IN AGENCIES

■ 1. The authority citation for part 250 is revised to read as follows:

Authority: 5 U.S.C. 105, 1101 note, 1103(a)(5), 1103(c), 1104, 1302, 3301, 3302; 7101 note (sec. 1128, Pub. L. 108–136). E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; E.O. 13197, 66 FR 7853, 3 CFR, 2001 Comp., p. 748; E.O. 14356, 90 FR 48387. Subpart B also issued under 5 U.S.C. 1103(a)(7); 5 U.S.C. 1401 and 1401 note (Pub. L. 107–296); 5 U.S.C. 1402; 5 U.S.C. 5105 note (Pub. L. 111–352); 31 U.S.C. 901(b)(1); 31 U.S.C. 1115(a)(3), (f), and note (Pub. L. 103–62); 31 U.S.C. 1116(c)(5); 5 CFR 10.2.

Subpart A—Authority for Personnel Actions in Agencies**■ 2. Revise § 250.102 to read as follows:****§ 250.102 Delegated authorities.**

(a) OPM may delegate its authority, including authority for competitive examinations, to agencies, under 5 U.S.C. 1104(a)(2), through a delegation agreement. The delegation agreement developed with the agency must specify the conditions for applying the delegated authorities. The agreement must also set minimum standards of performance and describe the system of oversight by which the agency and OPM will monitor the use of each delegated authority.

(b) At the request of an agency to whom a function has been delegated under paragraph (a) of this section, OPM may provide assistance to the agency performing such function.

(c) To the extent determined appropriate by OPM, an agency must reimburse OPM through payments to the revolving fund established under 5 U.S.C. 1304(e) for work performed by OPM pursuant to paragraph (b) of this section.

Subpart B—[Amended]**■ 3. Amend subpart B by removing the authority citation.****■ 4. Revise § 250.201 to read as follows:****§ 250.201 Coverage and purpose.**

Pursuant to 5 U.S.C 1103(c), this subpart defines a set of systems, including standards and metrics, for assessing the management of human capital by Federal agencies. These regulations apply to agencies covered by 5 U.S.C. 306(f) and support the performance planning and reporting that is required by 31 U.S.C. 1115(a)(3) and (f) and 1116(d)(5).

■ 5. Amend § 250.202 by:

- a. Adding in alphabetical order definitions for “Annual Staffing Plan” and “Annual Staffing Review”;
- b. Removing the definitions of “HRStat”, “Human Capital Evaluation Framework”, “Human Capital Operating Plan (HCOP)”, and “Human Capital Review (HCR)”;
- c. Adding in alphabetical order definitions for “President’s Management Agenda” and “Quarterly Staffing Plan Performance Review”.

The additions read as follows:

§ 250.202 Definitions.

Annual Staffing Plan (ASP) means an agency’s operational workforce planning document which includes metrics for evaluating current and future workforce

staffing needs, the effectiveness of staffing actions, and specific plans and goals for improvements across each of the four Human Capital Framework systems and standards, in alignment with the Agency Strategic Plan, Annual Performance Plan, budget formulation process, and the President’s Management Agenda.

Annual Staffing Review (ASR) means the annual evaluation of an agency’s implementation and effectiveness of its Annual Staffing Plan conducted by OPM and the Office of Management and Budget (OMB).

* * * * *

President’s Management Agenda means the Governmentwide management priorities and initiatives issued by OMB that establish strategic direction for improving Federal management functions, including human capital management, across executive branch agencies.

Quarterly Staffing Plan Performance Review means a review conducted pursuant to § 250.207.

* * * * *

§ 250.203 [Amended]**■ 6. Amend § 250.203 by:**

- a. In paragraph (b), removing the words “and diverse”; and
- b. In paragraph (c), removing “diverse,” in both places it appears.

■ 7. Amend § 250.204 as follows:

- a. In paragraph (a)(1), remove the words “Federal Workforce Priorities Report” and add in their place “President’s Management Agenda”;
- b. In paragraph (c)(2), remove the words “Federal Workforce Strategic Priorities Report” and add in their place “President’s Management Agenda”;
- c. In paragraph (c)(3), remove the words “HRStat reviews” and add in their place “Quarterly Staffing Plan Performance Reviews”;
- d. In paragraph (d)(7):
- i. Remove the words “Federal Workforce Priorities Report, which is published by OPM every four years” and add in their place “President’s Management Agenda and Agency Strategic Plan”; and
- ii. Remove the words “HRStat quarterly data-driven reviews of human capital performance” and add in their place “Quarterly Staffing Plan Performance Reviews”.
- e. Adding paragraphs (e) and (f).

The additions read as follows:

§ 250.204 Agency roles and responsibilities.

* * * * *

(e) Each agency must ensure that its internal delegations, organizational

structure, internal policies, and technological systems enable the agency’s Chief Human Capital Officer to have sufficient visibility, oversight and control so as to allow the Chief Human Capital Officer to:

(1) Fulfill his or her responsibilities under 5 U.S.C. 1401 and 1402(a); and

(2) Efficiently access the information described in 5 U.S.C. 1402(b).

(f) Each agency must establish and maintain a Strategic Hiring Committee to oversee hiring within the agency. The Strategic Hiring Committee must ensure that agency hiring is consistent with the agency’s mission needs and the agency’s Annual Staffing Plan. The Strategic Hiring Committee must include the agency’s Deputy Secretary, or equivalent, the chief of staff to the agency head, and the agency’s Chief Human Capital Officer.

■ 8. Revise § 250.205 to read as follows:**§ 250.205 Annual Staffing Plans and quarterly updates.**

(a) Each agency must develop an Annual Staffing Plan that aligns with the Agency Strategic Plan, Annual Performance Plan, Agency Budget, President’s Management Agenda, and the HCF. The plan must identify workforce priorities, hiring goals, and staffing strategies necessary to support mission accomplishment.

(1) The Annual Staffing Plan must be developed on a timeline consistent with the agency’s strategic planning and budget formulation cycle under the Office of Management and Budget Circular A–11, Part 6.

(2) The Chief Human Capital Officer must coordinate the Annual Staffing Plan with their agency’s Chief Financial Officer, Chief Operating Officer, and senior leadership.

(b) Each agency’s Annual Staffing Plan must:

(1) Include metrics, frameworks, and criteria for evaluating the agency’s current and future workforce and staffing needs;

(2) Target the agency’s hiring to address skills gaps, enhance service delivery, enable succession planning, and ensure that new appointments in the upcoming year are in the highest-need areas; and

(3) Include specific plans and goals for improvements regarding the four HCF systems and standards, including measurable performance targets.

(c) Each agency’s Annual Staffing Plan also must consider potential efficiencies that may be derived from organizational restructuring; elimination of unnecessary management layers; elimination of duplicative or nonessential functions and positions;

consolidation of administrative functions; reduction of unnecessary or low-value contractor positions; performance management of employees; internal reassignments; redistribution of workload across positions with similar duties and skill sets; process improvement; and adoption of technology.

(d) Each agency must prepare an Annual Staffing Plan at the start of the fiscal year in coordination with OPM and OMB. Each agency may, in coordination with OPM and OMB, update its Annual Staffing Plan during the course of the fiscal year based on enactment of relevant appropriations or authorizing legislation or otherwise amend their plans.

(e) Each agency must submit updates to OPM and OMB at the beginning of each quarter, showing progress in implementing their Annual Staffing Plan, and explaining any significant variances from the Annual Staffing Plan.

■ 9. Revise § 250.206 to read as follows:

§ 250.206 Annual Staffing Reviews.

(a) Each agency must participate in an Annual Staffing Review conducted by OPM and OMB to evaluate implementation of the agency's Annual Staffing Plan and assess progress toward workforce goals.

(b) As part of each Annual Staffing Review, each agency must submit a written statement to OPM signed by the agency head certifying that the agency's Chief Human Capital Officer has the visibility, oversight, and control required under § 250.204(e). If the certification identifies any gap in the Chief Human Capital Officer's visibility, oversight, or control, the agency must document the gap and include a timeline for remediation.

■ 10. Revise § 250.207 to read as follows:

§ 250.207 Quarterly Staffing Plan Performance Reviews.

The Chief Human Capital Officer must coordinate Quarterly Staffing Plan Performance Reviews with the agency Performance Improvement Officer and the Strategic Hiring Committee to evaluate implementation of the agency's Annual Staffing Plan and assess progress toward workforce goals. Findings from quarterly reviews must be incorporated into the quarterly updates to the agency's Annual Staffing Plan described in § 250.205(e). Agencies may integrate the Quarterly Staffing Plan Performance Reviews into their existing quarterly performance review processes where practicable.

Subpart C—[Amended]

■ 11. Amend subpart C by removing the authority citation.

■ 12. Amend § 250.302 by revising paragraph (a)(2) to read as follows:

§ 250.302 Survey requirements.

(a) * * *

(2) The 10 prescribed survey questions are listed below:

(i) Managers clearly communicate the goals of the organization.

(ii) The people I work with cooperate to get the job done.

(iii) In my work unit, differences in performance are recognized in a meaningful way.

(iv) My supervisor provides ongoing feedback to help me succeed and progress in my career.

(v) My supervisor holds my team accountable for achieving results.

(vi) I know how my work relates to the agency's goals.

(vii) I feel empowered to get things done at my organization.

(viii) I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.

(ix) In my work unit, steps are taken to deal with a poor performer who cannot or will not improve.

(x) In my work unit, poor performers usually (select all that apply):

Remain in the work unit and improve their performance over time;

Remain in the work unit and continue to underperform;

Leave the work unit—removed or transferred;

Leave the work unit—quit;

There are no poor performers in my work unit.

■ 13. Amend § 250.303 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 250.303 Availability of results.

(a) Each agency will make the results of its annual survey available to the public and post the results on its website unless the agency head determines that doing so would jeopardize or negatively impact national security. Each agency may determine the specific content of its public disclosure of its annual survey results.

* * * * *

(c) Each agency must submit survey results to OPM and OMB no later than 90 days after completion of survey administration.

[FR Doc. 2026–22093 Filed 10–28–26; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS–26–SFH–0100]

Single Family Housing Guaranteed Loan Program—Income Producing Accessory Dwelling Unit (ADU) Provisions

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is amending the Single Family Housing Guaranteed Loan Program (SFHGLP) regulation to permit the financing of single family homes with income producing Accessory Dwelling Units (ADUs) and clarify the eligibility of properties with features designed to accommodate home-based operations using non-commercial real estate features.

DATES: This final rule is effective December 28, 2026.

FOR FURTHER INFORMATION CONTACT: Stephanie Freeman, Finance & Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250–0784. Telephone: (314) 457–6413; or email: stephanie.freeman@usda.gov.

SUPPLEMENTARY INFORMATION:

Abbreviations

ADU Accessory Dwelling Unit
CFR Code of Federal Regulations
FNMA Fannie Mae
FHA Federal Housing Administration
FR Federal Register
FHLMC Freddie Mac
HUD Department of Housing and Urban Development
RHS Rural Housing Service
RD Rural Development
§ Section
SEQ. Sequentes
SFHGLP Single Family Housing Guaranteed Loan Program
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
USDA U.S. Department of Agriculture
VA The Department of Veterans Affairs

Statutory Authority

The SFHGLP is authorized by Section 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h)), as amended, and implemented by 7 CFR part 3555.

Background

RHS offers programs to develop and enhance housing and critical community infrastructure in rural areas. The Agency provides loans, grants, and loan guarantees for single and multi-family housing, childcare centers, emergency service facilities, hospitals, libraries, nursing homes, schools, and housing for agricultural workers, among other essential projects. RHS partners with non-profits, tribal governments, and state/federal agencies to provide technical assistance and supplementary financing to local communities.

Title V of the Housing Act of 1949 authorizes RHS to provide SFH loan guarantees, providing low and moderate income individuals in rural areas an opportunity to own decent, safe, and sanitary dwellings and related facilities.

To boost homeownership, the federal government has introduced new initiatives providing prospective buyers with greater flexibility to finance properties with ADUs. Growing demand for affordable housing and limited land availability in many rural communities have made financing properties with ADUs increasingly important. Homeowners can create ADUs within or attached to the primary dwelling through attic or basement conversions, building over existing structures like garages, or constructing standalone residential units.

Homeownership options remain limited for many Americans. The Agency recognizes ADUs offer multiple benefits, including expanding a community's housing supply by introducing new and innovative housing typologies of smaller scale, providing more affordable options for low- and moderate-income residents. ADUs also provide borrowers with a means to generate additional income. Together, these benefits support the broader goal of increasing affordable housing stock and promoting long-term homeownership stability.

Discussion of Public Comments

RHS published a proposed rule on March 31, 2026 [91 FR 15914] to amend the Single Family Housing Guaranteed Program (SFHGLP) regulation at 7 CFR part 3555. RHS received comments from 28 respondents, including individuals, interested parties, and associations. One comment received was not applicable to the contents of the rule.

The following summary presents the relevant comments:

Public Comment: Nineteen respondents supported the proposed rule, stating it would accommodate more buyers in rural America.

Agency's Response: RHS appreciates the support and has determined no action is required.

Public Comment: Four respondents expressed support for the proposed rule but recommended expanding eligibility to include small home-based operations with commercial real estate features, as well as clarifying ADU eligibility and income.

Agency's Response: RHS appreciates the comments. While the rule amends 7 CFR 3555.102(c) to permit properties with home-based businesses, 7 CFR 3555.102(b) will continue to prohibit purchasing or improving property principally used for income-producing purposes to ensure financed properties remain primarily residential. Regarding income, 7 CFR 3555.152(a)(3) states lenders may not use income to calculate an applicant's ratios if they cannot verify the source, if the income is not stable, or if it is unlikely to continue. The Agency determined potential income from an ADU falls into this category and will not include it in income calculations.

Public Comment: One respondent agreed the proposal would expand housing opportunities in rural America but raised concerns about consistent enforcement, broader policy implications, and RHS' statutory authority.

Agency's Response: RHS appreciates the comments. The changes fall within the statutory authority granted by the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), as amended. RHS recognizes ADUs can increase housing supply, offer additional affordable housing options, and support low- and moderate-income households through the receipt of potential supplemental income. These benefits support RHS' rationale for expanding affordable housing opportunities and promoting long-term homeownership stability.

Public Comment: One respondent expressed support for the proposal and recommended addressing ADU income and room rent income in the final rule.

Agency's Response: RHS appreciates the comments and recognizes rental income from an ADU can support homeowner financial stability. However, 7 CFR 3555.152(a)(3) states lenders may not use income to calculate an applicant's ratios if they cannot verify the source, if the income is not stable, or if it is unlikely to continue. The Agency determined potential income from an ADU falls into this category and will not include it in income calculations.

Public Comment: Two respondents expressed support and offered additional suggestions regarding

homebuyer education, home-based operations, renovation funding at purchase, expanding the ADU definition to include non-income producing ADUs, and establishing more precise property standards.

Agency's Response: RHS appreciates these comments and agrees supporting home-based operations is important. As clarified through this rule, properties accommodating a home-based operation are eligible. In addition, properties with non-income producing ADUs will remain eligible. Comments regarding homebuyer education and renovation funds are outside the scope of this rule.

Summary of Changes to Rule

This final rule adopts, without modification, the changes published in the proposed rule (91 FR 15914; March 31, 2026). The Agency is modifying 7 CFR part 3555 as follows:

(1) Add the definitions of *Accessory Dwelling Unit (ADU)* and *Living Unit* in 7 CFR 3555.10 to clarify the understanding of these terms.

(2) Update 7 CFR 3555.102(b) to permit the issuance of a guarantee when loan funds are used to finance a property which includes a single or multiple income producing ADUs.

(3) Update 7 CFR 3555.102(c) to permit the issuance of a guarantee when loan funds are used to finance a property which accommodates a home-based operation.

(4) Update 7 CFR 3555.201(b)(2) to clarify the eligibility of financing sites which include income producing ADUs.

Executive Orders and Statutory Regulatory Review Requirements

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations.

Executive Order 12866, Regulatory Planning and Review

This final rule has been determined to be not significant under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This final rule was reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as

specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. This rule does not impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule was reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments". Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Consultation is also required for any regulation that preempts tribal law or that imposes substantial direct compliance costs on Indian tribal governments and that is not required by statute. The Agency has determined that this rule does not, to our knowledge, have tribal implications that require formal tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Rural Housing Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. Under section 202 of the UMRA, the Agency generally must

prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, or tribal Governments, in the aggregate, or to the private sector, of \$100 million, or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this rule was reviewed in accordance with 7 CFR part 1b ("National Environmental Policy Act"). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1b.4(c)(31); (ii) no extraordinary circumstances exist; and (iii) the action is not "connected" to other actions with potentially significant impacts, is not considered a "cumulative action". Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

This final rule was reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program, nor does it require any more action on the part of a small business than required of a large entity.

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, political beliefs, marital status, familial status, parental status, veteran status,

religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. This final rule is within a Guarantee-based program. Guarantees are not covered under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments Act of 1972, as amended, when the Federal assistance does not include insurance or interest credit loans. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

Assistance Listing Number

The program affected by this final rule is listed in the Assistance Listing (AL) Number under number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burden under OMB Control Number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior

civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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List of Subjects in 7 CFR Part 3555

Administrative practice and procedure, Business and industry, Conflicts of interest, Credit, Environmental impact statements, Fair housing, Flood insurance, Grant programs—housing and community development, Home improvement, Housing, Loan programs—housing and community development, Low and moderate-income housing, Manufactured homes, Mortgage insurance, Mortgages, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, the Agency is amending 7 CFR part 3555 as follows:

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart A—General

■ 2. Amend § 3555.10 by adding in alphabetical order the definitions of

Accessory Dwelling Unit and *Living Unit* to read as follows:

§ 3555.10 Definitions and abbreviations.
* * * * *

Accessory Dwelling Unit. A habitable living unit located within or detached from a single family dwelling, subordinate in size, has means of separate ingress and egress meeting the minimum requirements for a living unit, which together constitutes a single interest in real estate.
* * * * *

Living Unit. A unit which contains a continuous and sufficient supply of safe and potable water, sanitary facilities and a safe method of sewage disposal, heating adequate for healthful and comfortable living conditions, domestic hot water, electricity adequate for lighting and mechanical equipment, and kitchen facilities adequate for the preparation and cooking of food. The unit must contain at least one bathroom, or similar space, which includes a water closet, lavatory, and bathtub or shower; and kitchen or kitchenette facilities which include a sink with potable running water and a stove utility hookup, or similar cooking instrument.
* * * * *

Subpart C—Loan Requirements

■ 3. Amend § 3555.102 by revising paragraphs (b) and (c) to read as follows:

§ 3555.102 Loan restrictions.
* * * * *

(b) *Income producing land or buildings.* Purchase or improvement of land or buildings which are typically used principally for income-producing purposes. This restriction shall not apply when loan funds are used for the financing of an otherwise qualifying property which contains, or will contain, a single or multiple accessory dwelling units;

(c) *Business or income-producing enterprise.* Purchase or the construction of buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise. This restriction shall not apply when loan funds are used for the financing of an otherwise qualifying property with design features which accommodate a home-based business or businesses; such as childcare, product sales, or craft production; which do not require specific commercial real estate features;
* * * * *

Subpart E—Underwriting the Property

■ 4. Amend § 3555.201 by revising paragraph (b)(2) to read as follows:

§ 3555.201 Site requirements.
* * * * *

(b) * * *
(2) The site must not include income-producing land or buildings to be used principally for income-producing purposes. This limitation shall not apply when an otherwise qualifying property contains, or will contain, a single or multiple accessory dwelling units. Vacant land without eligible residential improvements, or property used primarily for agriculture, farming, or commercial enterprise is ineligible for a loan guarantee.
* * * * *

George Kelly,
Administrator, Rural Housing Service.
[FR Doc. 2026-22038 Filed 10-28-26; 8:45 am]
BILLING CODE 3410-XV-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 4

[CBP Dec. 26-18]

RIN 1651-AB68

Pleasure Vessels of Malta Entitled To Cruising Licenses

AGENCY: U.S. Customs and Border Protection; the Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations by adding the Republic of Malta (Malta) to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. The U.S. Department of State has notified CBP that yachts used and employed exclusively as pleasure vessels and belonging to any resident of the United States are allowed to arrive at and depart from Maltese ports, and to cruise in Maltese waters without complying with formal entry and clearance procedures. Therefore, CBP is extending reciprocal cruising privileges to Maltese-flagged pleasure vessels.

DATES: This amendment is effective October 29, 2026. These reciprocal privileges became applicable for Malta as of June 10, 2026.

FOR FURTHER INFORMATION CONTACT: W. Richmond Beevers, Chief, Cargo

Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, ccrbranchcomments@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under 46 U.S.C. 60504, the Secretary of Homeland Security (Secretary) may allow foreign-flagged yachts used only for pleasure to arrive at and depart from U.S. ports and cruise in U.S. waters without paying any duties or fees, provided that the President is satisfied that the foreign country allows yachts owned by U.S. residents and used only for pleasure to arrive at and depart from its ports and cruise in its waters without entering, clearing, or paying any duties or fees. The statute also provides the Secretary discretion to require foreign yachts to obtain cruising licenses and to prescribe the form and conditions of those licenses. *See* 46 U.S.C. 60504; Public Law 109–304, 9(b), 120 Stat. 1485, 1680–81 (2006).

The Secretary has delegated to the Commissioner of CBP the authority to prescribe and approve cruising licenses for foreign countries under section 4.94(b) of title 19 of the Code of Federal Regulations (CFR). *See* DHS Delegation No. 07010.3, Revision 03.2. Accordingly, CBP has promulgated regulations governing cruising privileges for U.S. and foreign pleasure vessels. Section 4.94(a) of title 19 of the CFR provides that U.S.-documented vessels with a recreational endorsement, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the United States, may proceed from port to port in the United States or to foreign ports without clearing, and is not subject to entry upon its arrival in the United States, as long as they have not visited hovering vessels, received merchandise while in the customs waters beyond the territorial sea, or received merchandise while on the high seas. When returning from a foreign port or place, such pleasure vessels are required to report their arrival pursuant to 19 CFR 4.2.

Generally, foreign-flagged yachts entering the United States are required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States. *See* section 433 of the Tariff Act of 1930, as amended (19 U.S.C. 1433). However, CBP may issue cruising licenses to pleasure vessels from certain countries if it is found that yachts of the United States are exempt from formal entry and clearance procedures (*e.g.*, filing manifests, obtaining permits to proceed, and

paying entry and clearance fees) in those countries. *See* 19 CFR 4.94(b).

To obtain a cruising license, the owner of a foreign-flagged yacht must file an application with a port director. 19 CFR 4.94(c). If CBP issues a foreign-flagged yacht a cruising license, the yacht may arrive at and depart from the United States and cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of certain fees. *Id.* Such fees include entrance and clearance fees, fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. *Id.* A port director may issue a cruising license for a period not to exceed one year. *Id.* Upon arrival at each port in the United States, the master of a foreign-flagged yacht with a cruising license must report the fact of arrival to the appropriate CBP office. *Id.* Section 4.94(b) sets forth the list of countries whose yachts are eligible for cruising licenses.

By diplomatic note dated February 4, 2026, the Embassy of the Republic of Malta, in Washington, DC, informed the Department of State that Malta allows yachts from the United States, used exclusively as pleasure vessels and belonging to any resident of the United States, to arrive at and depart from Maltese ports, and to cruise in the waters of Malta without entering and clearing Maltese Customs and without the payment of any related charges for entry or clearance, dues, duty per ton, tonnage, taxes, or charges for a cruising license. By letter dated June 10, 2026, the Department of State advised the Chief, Cargo Security, Carriers and Restricted Merchandise Branch, CBP, that the Maltese treatment of U.S. pleasure vessels in Maltese waters appears to satisfy the conditions for reciprocal privileges and therefore recommended that Malta be added to the list of countries under the provisions of 19 CFR 4.94(b).

The Chief, Cargo Security, Carriers and Restricted Merchandise Branch, has determined that satisfactory evidence has been furnished to grant the reciprocal privileges allowed under 19 CFR 4.94(b), effective June 10, 2026. Accordingly, under the authority of 46 U.S.C. 60504, Maltese-flagged yachts used only for pleasure may proceed from port to port in the United States or to foreign ports without clearing and are not subject to entry upon arrival at a U.S. port, including the payment of any duties or fees. This final rule revises the list of countries in 19 CFR 4.94(b) to include Malta for the above reasons.

Administrative Procedure Act

CBP has initiated this rulemaking pursuant to an exchange of diplomatic notes between the U.S. Department of State and the Embassy of the Republic of Malta. This rule implements the reciprocal cruising privileges established through that diplomatic exchange. Therefore, this amendment involves a foreign affairs function of the United States and is being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, the 30-day delayed effective date does not apply under 5 U.S.C. 553(a)(1).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Because no notice of proposed rulemaking is required for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

Pursuant to 46 U.S.C. 60504, the Secretary of Homeland Security has the authority to issue cruising licenses for foreign pleasure vessels and promulgate regulations related to those cruising licenses under 19 CFR 4.94. This regulation is being issued in accordance with Department of Homeland Security Delegation 07010.3, Revision 03.2, which delegates to the Commissioner of CBP the authority to prescribe and approve cruising licenses for foreign countries under 19 CFR 4.94(b).

Rodney S. Scott, Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to Susan S. Thomas, the Executive Assistant Commissioner, Office of Trade, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

Amendment to the Regulations

For the reasons set forth above, part 4 of the title 19 of the Code of Federal Regulations is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority for part 4 and the specific authority for § 4.94 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. 60504;

* * * * *

■ 2. In § 4.94, amend the list of countries in paragraph (b) by adding, in appropriate alphabetical order, “Malta” to read as follows:

§ 4.94 Yacht privileges and obligations.

* * * * *

(b) * * *

Malta

* * * * *

Susan S. Thomas,

Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2026–22089 Filed 10–28–26; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL MEDIATION AND CONCILIATION SERVICE**29 CFR Part 1404**

RIN 3076–AA31

Requests for Arbitration Panels

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) published an interim final rule on August 4, 2026, and republished on August 28, 2026, that amended its arbitration services regulations to clarify when the Office of Arbitration may decline to issue an arbitration panel, make a direct appointment, or provide related services. This document responds to the comments, clarifies the scope of the rule’s threshold inquiry, adds procedural provisions governing notice, written disposition, request dates, and fees, and adopts the interim final rule as a final rule.

DATES: This final rule is effective October 29, 2026. The amendments to 29 CFR 1404.9, 1404.10, 1404.11, and 1404.12 made by the interim final rule have been in effect since August 4, 2026.

ADDRESSES: The interim final rule, the comments received, and this final rule are available on FMCS’s public website

at www.fmcs.gov. The comments received are also available for public inspection, by appointment, at the Office of General Counsel, Federal Mediation and Conciliation Service, One Independence Square, 250 E St. SW, Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Anna Davis, General Counsel, Federal Mediation and Conciliation Service, (202) 606–3737, adavis@fmcs.gov.

SUPPLEMENTARY INFORMATION:**I. Background****A. FMCS’s Arbitration Services and the Interim Final Rule**

FMCS maintains a Roster of Arbitrators and, through its Office of Arbitration (OA), furnishes panels of names of Roster arbitrators, makes direct appointments, and provides related services to parties to collective bargaining agreements under 29 CFR part 1404, which FMCS issues under Title II of the Labor Management Relations Act of 1947, 29 U.S.C. 171–183. See 29 CFR 1404.1. Arbitrators listed on the Roster are not FMCS employees; once an arbitrator is selected or appointed, the arbitrator’s relationship is solely with the parties. 29 CFR 1404.4(c).

FMCS has no power to compel parties to appear before an arbitrator, to enforce an agreement to arbitrate, to compel parties to arbitrate any issue, to influence or set aside an arbitrator’s decision, or to compel, deny, or modify the payment of an arbitrator’s compensation. 29 CFR 1404.9(c). OA may decline to furnish a panel or make an appointment where a request is overly burdensome or impracticable, and may decline to service a request from a party based on the party’s prior non-payment of arbitrator fees or other behavior that constrains the spirit or operation of the arbitration process. 29 CFR 1404.9(d). FMCS “retains its authority and responsibility to assure that the needs of the parties using its services are served” and may establish procedures for the preparation of panels and the appointment of arbitrators to that end. 29 CFR 1404.4(d).

Before the interim final rule, § 1404.9(b) provided that a request for a panel of seven arbitrators, “whether joint or unilateral, will be honored,” while providing that requests for a panel of other than seven names, for a direct appointment, or for special qualifications or other special service would be honored only if jointly submitted or authorized by both parties, and that OA takes no position on the status of the agreement to arbitrate, the arbitrability of the dispute, or the terms

of the parties’ contract by issuing a panel or appointing an arbitrator. Section 1404.10 provided that OA will not decide the merits of a claim by either party that a dispute is not subject to arbitration.

On August 4, 2026, FMCS published an interim final rule with request for comments at 91 FR 49273. The interim final rule restructured § 1404.9(b) into four paragraphs. Paragraph (b)(1) retained the rule that, upon request, OA will refer a randomly selected panel of seven arbitrators to parties to an agreement to arbitrate or to engage in fact-finding, or where labor arbitration or fact-finding may be provided by statute.

Paragraph (b)(2) provides that a request for a panel may be joint or unilateral unless part 1404, applicable law, or the parties’ agreement requires joint authorization for the requested service, and retained the requirement of joint authorization for panels of other than seven names, direct appointments, special qualifications, and other special services.

Paragraph (b)(3) provides that OA may conduct a limited threshold inquiry to determine whether issuing a panel, making a direct appointment, or providing related arbitration services would be inconsistent with applicable law, a court order, or FMCS’s statutory or regulatory authority; that OA may request from the parties the agreement, statutory provision, regulation, court order, written authorization, or other information necessary to make that determination; and that, following the inquiry, FMCS may issue the panel or appointment, decline to provide the requested service, hold the request in abeyance, or take other administratively appropriate action.

Paragraph (b)(4) provides that OA’s issuance of a panel or appointment, refusal to issue one, or decision to hold a request in abeyance does not constitute a decision on the validity of any collective bargaining agreement, the merits of any grievance, the arbitrability of any dispute, or the rights or obligations of the parties under any agreement or law. The interim final rule made conforming amendments to § 1404.10 (arbitrability), § 1404.11(b) and (c) (nominations of arbitrators and additional panels), and § 1404.12(b) and (c) (selection and appointment), and updated the nondiscrimination sentence in § 1404.11(b). 91 FR at 49274–75, 49277–78.

The interim final rule took effect on August 4, 2026, with comments due September 3, 2026. On August 27, 2026, the docket for the rule on www.regulations.gov displayed as

closed to comments before the comment period had ended. To ensure that no interested person was denied the opportunity to comment, FMCS republished the interim final rule in full on August 28, 2026, at 91 FR 55473, directed that comments be submitted to FMCS's Office of General Counsel by email or mail, and extended the comment period to September 28, 2026. The regulatory text and preamble of the republished rule were identical to those published on August 4. FMCS accepted every comment received on or before September 28, 2026.

FMCS found good cause under 5 U.S.C. 553(b)(B) to issue the rule without prior notice and comment and under 5 U.S.C. 553(d)(3) to make it effective upon publication, because the sentence in former § 1404.9(b) stating that every joint or unilateral request "will be honored" could be read to require OA to furnish panels and make appointments regardless of whether doing so was consistent with applicable law, a court order, or FMCS's authority, and because delay would perpetuate uncertainty about FMCS's obligations when presented with requests raising threshold legal objections. 91 FR at 49276. FMCS invited comment on all aspects of the rule and stated that, after considering timely comments, it would revise, withdraw, or confirm the rule in a subsequent document.

B. The Circumstances That Gave Rise to the Rule

Section 7103(b)(1) of Title 5 authorizes the President to exclude an agency or subdivision from coverage under chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute, upon determining that the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work and that chapter 71 cannot be applied to it in a manner consistent with national security requirements and considerations. Executive Order 14251, *Exclusions From Federal Labor-Management Relations Programs*, 90 FR 14553 (Apr. 3, 2025), and Executive Order 14343, *Further Exclusions From the Federal Labor-Management Relations Program*, 90 FR 42683 (Sept. 3, 2025), exercised that authority with respect to numerous agencies and subdivisions. Executive Order 14251 further directed excluded agencies, upon termination of their collective bargaining agreements, to terminate their participation in pending grievance proceedings under 5 U.S.C. 7121. Determinations under section 7103(b)(1) are committed to the President's judgment, and the courts

have declined to review them under the Administrative Procedure Act. *See A.F.G.E. v. Reagan*, 870 F.2d 723, 727–28 (D.C. Cir. 1989); *Dep't of Defense v. F.L.R.A.*, 685 F.2d 641, 650 (D.C. Cir. 1982) (holding that section 7103(b)(1) "is for the President alone to invoke"). Legal interpretations and directions issued by the President are controlling on the officers and employees of the Executive Branch. Exec. Order 14215, § 7, 90 FR 10447, 10449 (Feb. 24, 2025).

When an agency is excluded under section 7103(b)(1), chapter 71 does not apply to it. The agency has no statutory duty to bargain, its employees have no statutory right to a negotiated grievance procedure, and the statutory authorization for binding grievance arbitration in section 7121(b)(1)(C)(iii), which the commenters correctly identify as the source of a union's right to invoke arbitration unilaterally, does not reach it. During 2025 and 2026, many excluded agencies terminated their collective bargaining agreements. The validity of the Executive Orders and of particular terminations has been and remains the subject of litigation in several courts. As of the date of this rule, the Executive Orders remain in effect, and FMCS ensures compliance with applicable court orders related to the Executive Orders through seeking federal agencies' consent as the source of authority for the proceeding itself.

Beginning in the spring of 2026, OA received a growing number of unilateral requests for panels, additional panels, and appointments in matters in which the responding Federal agency asserted that it had been excluded from chapter 71, that the applicable agreement had been terminated, and that it could not lawfully participate in the requested arbitration. Requesting parties, in turn, cited the "will be honored" sentence of former § 1404.9(b) as obligating FMCS to furnish the panel and appoint the arbitrator regardless of the agency's exclusion. On April 22, 2026, FMCS's General Counsel issued a guidance memorandum to the Office of Arbitration, *Aligning FMCS's Arbitration Services with Executive Orders 14251 and 14343*, which FMCS posted on its public website. The memorandum directed that, for agencies identified in the Executive Orders, OA confirm the agency's consent before issuing a panel, hold the request in abeyance if consent was not given, preserve the request's submission date, and charge no fee until the request could be processed. The memorandum stated that FMCS's practice as to agencies not affected by the Executive Orders was unchanged. The regulatory language of former § 1404.9(b) was at

the center of a subsequent legal challenge to that memorandum. The interim final rule followed.

II. Comments Received and FMCS's Responses

A. Overview

FMCS received five comments during the comment period, each from one or more labor organizations representing Federal employees. The comments are posted on FMCS's public website, and FMCS refers to them below by number in the order received: Comment 1 (September 10, 2026), submitted jointly by three national labor organizations; Comment 2 (September 20, 2026), submitted by a local of a national labor organization; Comment 3 (September 23, 2026), submitted by an officer of a local union representing employees of a Federal medical facility; Comment 4 (September 28, 2026), submitted jointly by two national labor organizations; and Comment 5 (September 28, 2026), submitted by a coalition of Federal-sector labor organizations joined by twenty-three affiliated organizations.

All five comments oppose the rule. Comments 1, 4, and 5 ask FMCS to withdraw it. Comment 2 asks FMCS to withdraw it or, at minimum, to limit the threshold inquiry to situations involving a clear and controlling legal prohibition or court order. Comment 3 asks FMCS to revise the rule and proposes eight specific changes directed principally at the scope, timing, transparency, and reviewability of the threshold inquiry.

FMCS has considered each comment in full. For the reasons set out below, FMCS concludes that the comments do not identify a basis for withdrawing the rule. They do, however, identify respects in which the scope of the threshold inquiry and the process that accompanies it should be stated more precisely in the regulatory text, and FMCS has made the changes described in section III of this preamble in response. Before addressing the comments individually, FMCS addresses four issues that run through all of them.

B. Issues Common to the Comments

1. *The rule does not authorize FMCS to decide arbitrability.* Every commenter contends that the threshold inquiry is, in substance, an arbitrability determination that Congress assigned to arbitrators. Comments 1, 4, and 5 rely on 5 U.S.C. 7121(a)(1), which requires every negotiated grievance procedure to provide for the settlement of grievances "including questions of arbitrability," and on the deference that the Federal Labor Relations Authority (the

Authority) and the courts accord an arbitrator's construction of the agreement. *See Nat'l Weather Serv. Emps. Org. v. F.L.R.A.*, 966 F.3d 875, 881–82 (D.C. Cir. 2020).

FMCS does not dispute any of that law. It does not apply to the question the rule addresses. “Arbitrability,” in the sense in which chapter 71, the Authority, and the courts use the term, is whether a particular grievance may be heard by the arbitrator: whether it falls within the scope of the negotiated procedure, whether it was timely filed and processed, whether it is excluded by a statutory exception in section 7121(c), whether the grievant elected another forum, and similar questions of contract and statute that govern the dispute between the parties. The rule leaves every one of those questions to the arbitrator. Section 1404.10 continues to provide that OA will not decide the merits of a claim that a dispute is not subject to arbitration; § 1404.9(b)(4) provides that no action OA takes on a request constitutes a decision on the arbitrability of any dispute; and this final rule adds to § 1404.9(b)(3) an express statement that a party's contention that a grievance lacks merit, is untimely, or is not arbitrable does not, by itself, establish that FMCS may not provide the requested service.

The threshold inquiry concerns a different question: whether FMCS, an agency of the Executive Branch, may lawfully take the administrative action requested of it. That question arises where a court has stayed or enjoined the arbitration or the obligation to arbitrate; where the President has excluded the responding agency from chapter 71 under 5 U.S.C. 7103(b)(1), the agreement has been terminated, and the agency has, as the President directed, terminated its participation in the proceeding; or where part 1404 itself requires joint authorization for the service requested. None of those is a question of whether the grievance is arbitrable under the parties' agreement. An arbitrator cannot answer any of them with respect to FMCS, because, as Comment 5 emphasizes at length, FMCS is not a party to the agreement, not a party to the proceeding, and not subject to the arbitrator's jurisdiction. An arbitrator's award that a grievance is arbitrable binds the parties; it does not and cannot determine whether a Federal agency that is not before the arbitrator may lawfully furnish a service.

The commenters' position, taken to its conclusion, is that FMCS must issue a panel and appoint an arbitrator in every case, including where a court has enjoined the arbitration, because the effect of the injunction is a question for

the arbitrator. No commenter accepts that conclusion. Comment 2 states that if “an actual court order or clear law prohibits FMCS from providing a panel, FMCS obviously must follow the law.” Comment 3 agrees that “a binding order applicable to a request cannot be ignored,” that FMCS “cannot ignore an applicable legal bar or a court order,” and that “a genuinely applicable prohibition should be honored.” Comments 1, 4, and 5, for their part, nowhere contend that FMCS must furnish a panel in the face of a court order forbidding the arbitration. Once that is conceded, the disagreement is not about whether FMCS may inquire into its own authority before acting but about how narrowly that inquiry is defined and what process accompanies it. Those are the matters FMCS has addressed in this final rule.

2. *No commenter identifies any law that requires FMCS to furnish a panel on unilateral request, and the commenters' own statutory analysis confirms that the language characterized as an obligation existed only in FMCS's regulation.* Comment 5 argues, in detail, that neither Title II of the Labor Management Relations Act nor the Administrative Dispute Resolution Act (ADRA) reaches Federal-sector grievance arbitration, and that chapter 71 assigns FMCS a role only in the resolution of bargaining impasses under 5 U.S.C. 7119. Comment 4 likewise observes that neither chapter 71 nor FMCS's enabling act mentions FMCS in connection with grievance arbitration. Comment 5 states that FMCS “appears in none of” the provisions of chapter 71 governing grievances, arbitrability, review of awards, or unfair labor practices.

FMCS agrees that chapter 71 imposes no obligation on FMCS with respect to grievance arbitration. Section 7121 requires agencies and exclusive representatives to negotiate a grievance procedure ending in binding arbitration; it does not direct them to obtain the arbitrator from FMCS, and many agreements do not. Parties are free to select any arbitrator or arbitration procedure acceptable to them. 29 CFR 1404.8. FMCS furnishes names from its Roster as a service, for a fee, to parties who choose to use it. The commenters' demonstration that no statute requires FMCS to provide that service is a demonstration that the language characterized as an obligation to honor every unilateral request existed in one place only: the sentence of former § 1404.9(b) that the interim final rule removed. What has been characterized as a regulatory commitment that FMCS made, FMCS may amend, subject to the

requirements of the Administrative Procedure Act (APA). The commenters do not identify a statute that forbids the amendment, because there is none.

Comment 5's observation that FMCS has, in different documents over the years, cited different provisions of the Labor Management Relations Act as the basis for its Roster does not alter this conclusion. Whether FMCS's furnishing of Roster services to Federal-sector parties rests on the declaration of policy in 29 U.S.C. 171(b), which makes governmental facilities available for “voluntary arbitration,” or on 29 U.S.C. 173(f), which authorizes FMCS to make its services available to Federal agencies and directs it to consult with the interagency body designated under 5 U.S.C. 573 in maintaining rosters of neutrals and arbitrators, each provision authorizes the service and neither obligates it. The phrase “voluntary arbitration” in section 171(b), and the title of subpart A of part 1404 (“Arbitration Policy”), reflect the premise on which FMCS has always operated: that it facilitates arbitration to which the parties have lawfully agreed. Neither provision contemplates that FMCS will constitute a tribunal for a proceeding that the law does not authorize.

3. *Where chapter 71 applies and an agreement is in effect, section 7121 supplies the authorization for binding arbitration; the rule's discussion of consent and sovereign immunity concerns the circumstance in which chapter 71 does not apply.* Comments 4 and 5 devote considerable attention to the interim final rule's citation of 5 U.S.C. 572(a) and (c) and to its discussion of sovereign immunity. Comment 5 argues that ADRA governs an agency's discretionary election of alternative procedures in its own administrative programs and has nothing to do with a grievance procedure that Congress required the parties to negotiate; that consent under chapter 71 is given when the agreement is executed; and that section 7121, which the interim final rule itself cited, is the statutory authorization that the sovereign immunity principle requires. Comment 4 argues that FMCS has not explained how providing a panel would violate the Constitution.

FMCS agrees with the commenters that, where chapter 71 applies and a collective bargaining agreement with a negotiated grievance procedure is in effect, section 7121(b)(1)(C)(iii) is the statutory authorization for binding arbitration, that authorization permits either party to invoke arbitration alone, and the agency's consent is supplied by the agreement it negotiated. 91 FR at

49274. In that circumstance, FMCS does not require, and under this rule will not seek, any renewed or case-specific consent from the responding agency before issuing a seven-name panel on a unilateral request. Comment 5 reads the interim final rule as applying an ADRA consent requirement to every Federal-sector grievance. It does not. To remove any doubt, FMCS states here that it does not read 5 U.S.C. 572 to require a Federal agency covered by chapter 71 to consent, case by case, to grievance arbitration under an agreement in effect.

The interim final rule's discussion of consent and sovereign immunity addresses the circumstance in which chapter 71 does not apply. Chapter 71's arbitration provisions are, by their terms, components of the chapter. Section 7121 requires grievance procedures ending in binding arbitration in agreements negotiated under the chapter; section 7122 provides for exceptions to, and the finality of, awards rendered in arbitration "under this chapter"; and the chapter defines a "collective bargaining agreement" as one "entered into as a result of collective bargaining pursuant to the provisions of this chapter." 5 U.S.C. 7103(a)(8), 7121, 7122.

Those provisions are not freestanding delegations of arbitral power; they are elements of an integrated statutory scheme whose rights and remedies exist only as Congress created them. *United States v. Fausto*, 484 U.S. 439, 445 (1988); *Karahalios v. Nat'l Fed'n of Fed. Emps., Local 1263*, 489 U.S. 527, 531–33 (1989). An arbitrator acting under a negotiated grievance procedure exercises a statutory delegation whose content Congress defined. *Cornelius v. Nutt*, 472 U.S. 648, 660–63 (1985), not an authority arising from the parties' private agreement. Section 7103(b)(1) authorizes the President to exclude an agency "from coverage under this chapter." When the President does so, sections 7121 and 7122 no longer apply to the agency, and an agreement that survives as a document no longer carries the statutory character the chapter gave it.

With chapter 71 removed, the governing principles are those of sovereign immunity and the limited authority of Federal officers. The United States may be subjected to a binding adjudication only where Congress has consented, and that consent must be "unequivocally expressed in statutory text." *Lane v. Peña*, 518 U.S. 187, 192 (1996); accord *United States v. Sherwood*, 312 U.S. 584, 586 (1941). No officer can supply that consent by contract, conduct, or acquiescence. *United States v. Shaw*, 309 U.S. 495,

500–01 (1940); *Minnesota v. United States*, 305 U.S. 382, 388–89 (1939); *United States v. Mitchell*, 463 U.S. 206, 215–16 (1983). And an award payable from the Treasury requires an appropriation made by law, for which neither an agency's agreement nor its conduct can substitute. U.S. Const. art. I, § 9, cl. 7; *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424–32 (1990).

Congress's enactment of 5 U.S.C. 575, which authorizes agencies to use binding arbitration only where all parties consent in a written agreement that specifies a maximum award, entered by an official with authority to settle the matter, and subject to guidance issued by the agency head in consultation with the Attorney General, and which supplies its own enforcement and review provisions, 5 U.S.C. 575, 580, 581, reflects the settled understanding that an agency may submit to binding arbitration only where a statute authorizes it, and that Congress legislates expressly when it intends arbitral awards to be enforceable against the sovereign. See *Constitutional Limitations on Federal Government Participation in Binding Arbitration*, 19 Op. O.L.C. 208 (1995).

Section 7121 is such a statute for agencies covered by chapter 71. When the President excludes an agency under section 7103(b)(1), that authorization no longer reaches the agency, and the agreement through which the agency gave its consent has, in the cases that gave rise to this rule, been terminated. In that circumstance, a request that FMCS furnish a panel and appoint an arbitrator to hear a grievance against the excluded agency is a request that FMCS constitute a tribunal over a Federal agency that no statute subjects to it. Comment 5's argument that ADRA does not reach such a dispute, if correct, does not help the commenters; it means that there is even less authority for the proceeding than the interim final rule contemplated.

Nor can the arbitration article of a terminated chapter 71 agreement simply be relabeled as an ADRA submission: such articles ordinarily specify no maximum award, were not adopted under agency-head guidance issued in consultation with the Attorney General, and purport to make arbitration a standing condition invocable unilaterally rather than a consensual submission of defined issues. An excluded agency that elects to arbitrate must therefore do so under ADRA or another statutory authority on that authority's own terms, and OA may ask the parties to identify that authority. Nothing in the rule, finally, prevents an excluded agency and a labor

organization from jointly requesting FMCS's mediation or other nonbinding services, see 5 U.S.C. 571(3), which FMCS remains available to provide.

Comment 4 asks how providing a panel in that circumstance would implicate the Constitution. The interim final rule's reference to constitutional limits was to Article II. An Executive Branch agency has no authority to facilitate a proceeding that would subject another Executive Branch agency to binding adjudication without statutory authorization, and no authority to act contrary to a determination the President has made under a statute that commits that determination to him.

The Office of Legal Counsel has explained that, under the Take Care Clause, "where a statute or other law operates to require the government to submit to binding arbitration, the government must submit." 19 Op. O.L.C. at 224. The corollary follows: where no statute requires or authorizes submission, Executive Branch officials may not submit the United States to binding arbitration on the strength of a contract alone, and FMCS may not lend its process to that end. An exclusion under section 7103(b)(1), moreover, asserts no constitutional authority to override the statute; it is the exercise of an authority Congress itself conferred, which places the President where his authority is at its maximum. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

Where the President has determined under section 7103(b)(1) that chapter 71 does not apply to an agency and has directed that agency to cease participating in grievance arbitration, FMCS, which is bound by that determination to the same extent as the excluded agency, may not treat its own regulation as requiring it to furnish the means by which the proceeding goes forward. The commenters' disagreement with the Executive Orders is a disagreement with the President, which the courts will resolve in the litigation now pending. It is not a reason for FMCS to administer its Roster as though the Orders did not exist.

4. *The commenters' objections to the scope and process of the inquiry have been addressed in this final rule.* The most substantial criticism in the comments is not that FMCS may never decline a service that it cannot lawfully provide but that the regulatory text, as written, could permit OA to decline or hold a request on the basis of an ordinary objection to the grievance, could leave a request in abeyance indefinitely without explanation, and

could leave the requesting party without its fee, without its place in line, and without a stated path to reconsideration. Comment 3 develops these concerns most fully; Comment 5 describes matters in which, before the rule issued, OA raised questions that the commenter characterizes as contractual or jurisdictional rather than as questions of FMCS's authority.

FMCS has considered these criticisms and agrees that the regulatory text should state the limits of the inquiry and the process that accompanies it. This final rule therefore revises § 1404.9(b)(3) to provide that the inquiry is limited to whether FMCS may lawfully provide the requested service; that a party's contention that a grievance lacks merit, is untimely, or is not arbitrable under the agreement, or a party's disagreement with a grievance or unwillingness to participate in the arbitration, does not by itself establish that providing the service would be inconsistent with law, a court order, or FMCS's authority; and that OA will afford each party a reasonable opportunity to respond to information submitted by the other. It adds § 1404.9(b)(5), providing that OA will notify the parties in writing of any decision to decline or hold a request and of the basis for such a decision; that a request held in abeyance retains its original date of receipt; that OA will reconsider a held request upon a party's submission of information bearing on the basis for the hold and will periodically review all held requests; and that a party may obtain a refund or credit of the fee paid for a request that is declined or held. It revises § 1404.12(b) to provide that a party's failure to submit ranked preferences does not by itself establish that an appointment would be inconsistent with law. These changes are discussed in section III.

C. Comment 1

Comment: The comment contends that the rule is procedurally improper because none of the statutory bases for omitting notice and comment applies; that "impracticable" requires an emergency, "unnecessary" applies only to minor or technical rules, and "contrary to the public interest" applies only where advance notice would itself cause harm, citing *Am. Pub. Gas Ass'n v. D.O.E.*, 72 F.4th 1324, 1339–40 (D.C. Cir. 2023), *U.S. Steel Corp. v. E.P.A.*, 595 F.2d 207, 214 (5th Cir. 1979), and *Utils. Solid Waste Activities Grp. v. E.P.A.*, 236 F.3d 749, 754–55 (D.C. Cir. 2001); that FMCS cites no examples of confusion and assigns thousands of arbitrators each year under a rule in

place since 1979; that the rule is inadequately reasoned under *D.H.S. v. Regents of the Univ. of Cal.*, 591 U.S. 1 (2020), *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), and *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016), because it offers no data, does not explain the alleged confusion, and does not account for the reliance of unions that incorporated FMCS's procedures into their agreements; that the rule is a post hoc rationalization of the April 22, 2026 memorandum; and that the rule is internally inconsistent because deciding that sovereign immunity or an Executive Order forecloses a panel is deciding the parties' rights and will render CBA provisions null.

Response: The procedural objections are addressed in section II.H. As to the asserted absence of confusion, the comment conflates the volume of FMCS's ordinary business with the question the rule addresses. The great majority of the panels OA issues each year involve private-sector parties or Federal-sector parties as to whom no question of FMCS's authority arises, and the rule does not change how those requests are processed. The confusion the interim final rule identified arose in a specific and, by mid-2026, recurring circumstance: unilateral requests for panels and appointments in matters involving agencies that the President had excluded from chapter 71 and that had terminated the applicable agreement, in which the requesting party invoked the "will be honored" sentence as obligating FMCS to proceed. That the sentence was so invoked is not speculation; the regulatory language was central to litigation challenging the April memorandum, and the comments in this rulemaking invoke it in the same way. A regulation that is being asserted as a mandate to take an action the agency believes it lacks authority to take is a regulation whose meaning is in dispute, and FMCS was entitled to resolve that dispute by amending it.

The comment's reliance argument is addressed in response to Comment 5 and in section II.H. FMCS notes here that the interim final rule did consider reliance interests, 91 FR at 49276, and that this final rule adds provisions—preservation of the request date, written notice, reconsideration, and refund or credit—that respond directly to the reliance the comment describes.

The asserted internal inconsistency rests on the premise addressed in section II.B.1. A determination that FMCS may not lawfully furnish a service is a determination about FMCS. It does not purport to decide, and under § 1404.9(b)(4) does not decide, whether

the parties' agreement is valid or what their rights under it are; those questions remain for the Authority and the courts, and a party that believes the other has breached the agreement by refusing to arbitrate may say so in the forum with jurisdiction to decide it. The comment's assertion that the rule "will render CBA provisions null" is incorrect for agreements in effect between parties covered by chapter 71: for those parties, as section II.B.3 explains, FMCS will issue a seven-name panel on unilateral request as before. For agreements that an excluded agency has terminated, the question whether the provisions remain enforceable is being decided in litigation to which FMCS is not a party, and FMCS will act in accordance with the result.

As to the characterization of the rule as a post hoc rationalization of the April 22, 2026, memorandum, FMCS addresses that contention in response to Comment 5. FMCS adds that an agency that confronts a new and recurring question, issues guidance to its staff on how to process the matters before it, and then codifies the governing standard through rulemaking that invites and responds to public comment has followed the ordinary course, not evaded it.

D. Comment 2

Comment: The comment opposes giving FMCS authority to refuse or delay panels on the basis of a threshold inquiry. It contends that, for years, FMCS provided the panel and left arbitrability to the arbitrator; that FMCS cannot both disclaim deciding arbitrability and reserve authority to refuse a panel; that the rule adds a gatekeeper between workers and the process they negotiated, generates additional disputes and expense that taxpayers bear, and is part of a pattern of narrowing Federal employees' workplace protections, including those of the more than half a million veterans in the Federal civilian workforce; and that, if a court order or clear law prohibits FMCS from providing a panel, FMCS must follow it, but merely raising a legal or arbitrability objection should never become a tool for delay. The comment asks FMCS to withdraw the rule or, at minimum, to limit the threshold inquiry to situations involving a clear and controlling legal prohibition or court order.

Response: FMCS appreciates the comment's recognition that FMCS must follow a court order or law that prohibits it from providing a panel, and agrees with the comment's central practical point: an objection to the merits or arbitrability of a grievance

should not become a tool for delay. The revisions to § 1404.9(b)(3) in this final rule adopt that principle in the regulatory text. The inquiry is limited to whether FMCS may lawfully provide the service, and a party's objection to the grievance, its disagreement with the grievance, or its unwillingness to participate does not by itself establish that FMCS may not. FMCS has not adopted the comment's alternative formulation ("clear and controlling") as the regulatory standard, because whether a legal prohibition is "clear" is itself a judgment, and the standard in the rule, whether providing the service would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority, is the standard that governs every action an Executive agency takes. FMCS expects that, in practice, the two formulations will rarely diverge: a request that does not involve a court order, an agency excluded from chapter 71, or a service that part 1404 requires to be jointly authorized will be processed as it always has been.

The comment's concern about additional cost and bureaucracy is addressed in section II.G.6 and in section IV. FMCS notes that, where FMCS lacks authority to provide a service, the cost of the resulting dispute is not created by FMCS's declining to provide it; it is created by the underlying legal dispute between the parties, which would exist, and would have to be resolved somewhere, whether or not a panel issued. Nothing in the rule affects the representational rights of Federal employees, including veterans, under chapter 71 where it applies.

E. Comment 3

Comment: The comment, submitted by an officer of a local union representing employees of a Federal medical facility, asks FMCS to revise the rule so that an ordinary, properly authorized unilateral request for a seven-name panel is processed promptly and a party's disagreement with a grievance or unwillingness to participate does not, by itself, prevent the other party from obtaining a neutral. The comment acknowledges that revised § 1404.9(b)(2) preserves unilateral requests for standard panels and that FMCS cannot ignore a court order but contends that the breadth of § 1404.9(b)(3), the absence of deadlines, and the absence of any requirement of a written explanation could allow a general objection by the responding agency to trigger an indefinite hold.

The comment describes two pending grievances at the commenter's facility, concerning environmental differential

pay and weather and safety leave during a March 2026 winter storm, to illustrate the costs of delay to employees, the agency, and the veterans the facility serves, while expressly disclaiming any contention that FMCS declined a panel in either matter or that the rule caused delays that preceded it. The comment discusses the First Circuit's May 16, 2026, order in *A.F.G.E. Local 2305 v. Dep't of Veterans Affs.*, No. 26–1321, which the commenter describes as distinguishing reinstatement of the VA agreement from specific enforcement of its grievance and arbitration procedures, and asks FMCS to identify the actual scope of any order on which it relies. The comment asks FMCS to explain whether the April 22, 2026, memorandum remains operative, observes that a preserved filing date does not appoint an arbitrator, and questions whether the alternatives the interim final rule identifies (the Authority, the courts, or another provider) are available in practice. The comment then proposes eight specific changes.

Response: FMCS appreciates the care with which the comment distinguishes between what the rule's text permits and what the commenter fears it could permit in practice and has adopted the substance of several of its proposals. FMCS responds to the eight proposals in order.

First, the comment asks FMCS to state expressly that an ordinary seven-name panel request authorized by statute or agreement will be processed when made by either party unless FMCS identifies a specific, presently applicable legal prohibition on providing the service, and to clarify that the responding party's lack of contemporaneous consent is not, standing alone, such a prohibition where a grievance has been invoked under an applicable negotiated procedure. FMCS has adopted this proposal in substance. Section 1404.9(b)(2) already provides that a request for a seven-name panel may be unilateral unless part 1404, applicable law, or the agreement requires joint authorization. Revised § 1404.9(b)(3) now provides that a party's disagreement with a grievance or unwillingness to participate in the arbitration does not by itself establish that FMCS may not provide the service, and section II.B.3 of this preamble states that FMCS will not seek case-specific consent from an agency covered by chapter 71 under an agreement in effect. Where the responding agency has been excluded from chapter 71 and the agreement has been terminated, the basis for declining or holding the request is the exclusion and

termination, not the agency's unwillingness to participate, and OA's written notice under new § 1404.9(b)(5) will say so.

Second, the comment asks FMCS to confine the inquiry to FMCS's authority to provide the requested service, to require an objecting party to identify the authority on which it relies, and to provide that ordinary factual, contractual, timeliness, and merits defenses are not decided through the screen and that an objection does not automatically suspend a request merely because it uses words such as "jurisdiction" or "arbitrability." FMCS has adopted this proposal in substance in revised § 1404.9(b)(3). FMCS has not added a regulatory requirement that an objecting party submit a formal statement of authority, because OA may already request the agreement, statute, regulation, order, authorization, or other information it needs, and because, in the cases that gave rise to the rule, the relevant authority (the Executive Order excluding the agency and the agency's notice of termination) is a matter of public record. FMCS agrees, however, that the burden of identifying the asserted bar lies in the first instance with the party asserting it, and that OA will not treat an objection as warranting abeyance merely because of the terms in which it is cast.

Third, the comment asks FMCS to establish short default time limits for objections, responses, and decisions, suggesting five, five, and ten business days, and to prohibit abeyance "until further notice" without a date for reconsideration. FMCS agrees that a request should not remain in abeyance without explanation or any stated path forward, and new § 1404.9(b)(5) requires written notice of the basis for a hold, reconsideration upon the submission of information bearing on that basis, and periodic review of every held request. FMCS has not adopted fixed deadlines in the regulatory text. The threshold questions that have arisen under the rule typically turn on the status of an Executive Order exclusion, a termination, or a court order that is the subject of ongoing litigation, and a fixed deadline for decision would, in many such cases, force OA to decline a request that it would otherwise hold pending a judicial ruling, to the detriment of the requesting party. OA will act on threshold questions as promptly as the circumstances permit and will state in its written notice what development would permit it to proceed.

Fourth, the comment asks that OA provide a short written disposition to both parties whenever it declines,

suspends, or conditions service, identifying the service requested, the controlling authority, how it applies, the status of the original request date, and what would permit reconsideration. FMCS has adopted this proposal in new § 1404.9(b)(5), which requires written notice to the parties of the action taken and the basis for it, and which provides for preservation of the request date and for reconsideration. OA's written notices will identify the responsible FMCS official.

Fifth, the comment asks for a defined reconsideration route, periodic review of holds, notice when a cited impediment changes, and preservation of the original receipt date and position without a new fee. New § 1404.9(b)(5) adopts each of these elements.

Sixth, the comment asks FMCS to clarify that the one-party ranking process in § 1404.12(b) continues to operate when the other party simply declines to rank, and that joint authorization is not imported into standard unilateral panels through the screening provisions. FMCS has adopted this proposal. Revised § 1404.12(b) provides that a party's failure to submit its ranked preferences does not by itself establish that an appointment would be inconsistent with applicable law, a court order, or FMCS's authority. The limitation in § 1404.12(b) operates only where OA has determined under § 1404.9(b)(3) that the appointment itself may not lawfully be made, and the written notice required by § 1404.9(b)(5) will identify that distinct basis.

Seventh, the comment asks FMCS to publish deidentified implementation data concerning joint and unilateral Federal-sector requests, threshold inquiries, the categories of impediment asserted, time in inquiry or abeyance, and dispositions. FMCS has not adopted a regulatory reporting requirement, which would entail recordkeeping and systems changes whose cost the interim final rule did not contemplate. FMCS agrees, however, that information about how the rule is being applied would assist the public and FMCS alike, and FMCS will endeavor to make aggregate information about threshold inquiries under § 1404.9(b)(3) available on its website.

Eighth, the comment asks FMCS to consider the alternative of issuing a standard panel with an express reservation that the service expresses no view on consent, contract validity, arbitrability, or the merits, whenever no specific legal bar to the administrative act is established. For requests that do not present a question of FMCS's authority, that is what the rule as

revised provides: the panel issues, and § 1404.9(b)(4) supplies the reservation. For requests that do present such a question, because the responding agency has been excluded from chapter 71 and has terminated the agreement, or because a court has stayed or enjoined the arbitration, the alternative does not answer the concern. The disclaimer in § 1404.9(b)(4) describes what FMCS's action does not decide; it cannot supply authority that the law withholds, and a panel issued "with reservation" to constitute a tribunal over an agency that no statute subjects to it is still that.

As to the comment's remaining points: FMCS agrees that the scope of any court order on which OA relies must be identified with care, and new § 1404.9(b)(5) requires OA to state the basis for its action in writing. FMCS does not express a view on the First Circuit's May 16, 2026, order, which concerns litigation to which FMCS is not a party; FMCS's obligation is to act consistently with applicable court orders as they apply to any request before OA. As to the April 22, 2026, memorandum, issued before the rule and will be conformed to this final rule; to the extent it is inconsistent with the regulatory text as revised, the regulation controls. FMCS agrees that a preserved filing date does not appoint an arbitrator and has not suggested otherwise; the preservation of the date, now codified, protects the requesting party's position for the day on which the impediment is removed. The availability and adequacy of alternative forums is addressed in response to Comment 5.

F. Comment 4

Comment: The comment contends that the rule is inconsistent with chapter 71 because section 7121(a)(1) assigns questions of arbitrability to the negotiated procedure and to arbitrators, Congress deliberately moved away from the agency-controlled advisory arbitration of Executive Order 10988, and Congress provided a post-award review process before the Authority and the courts of appeals that leaves no risk an agency's objection will go unheard; that neither chapter 71 nor FMCS's enabling act gives FMCS a role in arbitrability, and FMCS has conceded that its role is administrative and facilitative; that the threshold inquiry is an arbitrability determination because it requires FMCS to assess one party's legal objection and, on that basis, to foreclose the other party's access to arbitration; that the interim final rule discloses no standard for the inquiry; that FMCS lacked good cause because eliminating uncertainty is not good cause, citing *Mack Trucks, Inc. v.*

E.P.A., 682 F.3d 87, 93–95 (D.C. Cir. 2012), and *California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018), and FMCS's prior rulemakings used notice and comment; that the rule is substantive rather than clarifying; that there is no evidence of confusion, and FMCS has not addressed its decades-long practice, including its 2010 rejection of a proposal to have OA determine whether an agreement requires a joint request; that the rule is internally contradictory; that FMCS failed to consider that no prior exclusion under section 7103(b), including President Carter's in 1979, prompted any change in FMCS's regulations, and that the rule reaches disputes in which the Executive Orders play no part; and that the sovereign immunity rationale fails because FMCS has not explained the constitutional violation, is not the body to decide sovereign immunity, and did not consider whether other statutory authorities permit arbitration to proceed. The comment also contends that the interim final rule's suggestion that a refusal to arbitrate may be pursued as an unfair labor practice is a "nonstarter" because a party cannot pursue a charge over a failure to strike names from a panel that does not exist.

Response: The comment's principal contention, that the threshold inquiry is an arbitrability determination assigned by section 7121(a)(1) to arbitrators, is addressed in section II.B.1. FMCS adds the following: The comment's history is accurate: Congress replaced the advisory arbitration of Executive Order 10988, under which the agency had the last word, with binding arbitration that either party may invoke, and it provided for review of awards by the Authority and the courts of appeals. Each of those provisions governs the relationship between the agency and the exclusive representative. Each operates within chapter 71, and each depends on chapter 71 applying to the agency: section 7122, by its terms, governs awards rendered in arbitration "under this chapter," and the agreements to which section 7121 applies are, by statutory definition, those negotiated "pursuant to the provisions of this chapter." 5 U.S.C. 7103(a)(8), 7122(a).

The comment does not address what happens when, by the President's determination under section 7103(b)(1), the agreement is not covered by chapter 71. In that circumstance, there is no section 7121 procedure, no section 7122 review, and no section 7123 petition; the carefully constructed scheme the comment describes has, as to that agency, been withdrawn by the statute itself. The comment's argument that FMCS is "placing its policy preference

over that of Congress” has it backwards. Congress chose to give the President the authority to exclude agencies from chapter 71 for national security reasons and to make that determination unreviewable. FMCS’s rule gives effect to that choice; the comment asks FMCS to disregard it.

The comment’s assertion that the inquiry “discloses no standard” is addressed by the regulatory text, which states the standard: whether providing the service would be inconsistent with applicable law, a court order, or FMCS’s statutory or regulatory authority. This final rule narrows that standard further by providing what does not satisfy it.

As to FMCS’s prior practice, the comment is correct that FMCS has furnished panels on unilateral request since 1979, and that, in 2010, FMCS declined to adopt a proposal under which OA would have examined whether the parties’ agreement required joint requests and declined to proceed if the request had such a requirement and a party objected. 75 FR 30704, 30705 (June 2, 2010). FMCS declined that proposal because it would have placed OA in the position of interpreting collective bargaining agreements. The present rule declines that role for the same reason: a party’s contention that a grievance is not arbitrable under the agreement does not by itself warrant declining or holding a request. What the present rule addresses, and what the 2008 proposal did not, is the circumstance in which a question arises about FMCS’s own authority to act. Nothing in FMCS’s history suggests that it ever understood its regulation to require it to furnish panels where the law forbade it; the sentence the interim final rule removed was simply not tested against that circumstance until 2026.

The comment’s observation that no prior exclusion under section 7103(b), including those in 1979, prompted a change to FMCS’s regulations identifies no flaw in the rule. Prior exclusions, as the comment’s own citation reflects, were adopted at the inception of the statute or involved agencies and subdivisions in which collective bargaining agreements with negotiated grievance procedures were not in effect or were few. The 2025 Executive Orders excluded agencies and subdivisions employing a substantial share of the Federal workforce, many of them parties to longstanding agreements, and directed those agencies to terminate the agreements and their participation in pending grievance proceedings. The question whether FMCS must furnish panels and appointments for proceedings against those agencies did

not arise in 1979 and arose repeatedly in 2026. An agency is not required to amend its regulations in anticipation of a circumstance that has not arisen, and it is not precluded from amending them when the circumstance arises.

The comment’s objection that the rule reaches disputes in which the Executive Orders play no part is addressed in response to Comment 5. FMCS adds that the comment does not identify any dispute outside the Executive Orders in which, under the rule as revised, OA would have a basis to decline or hold a request, other than one involving a court order staying or enjoining the arbitration or a service that part 1404 requires to be jointly authorized, and FMCS does not understand the comment to contend that OA must disregard either.

The sovereign immunity arguments are addressed in section II.B.3. As to the contention that FMCS is not the body to decide questions of sovereign immunity, FMCS does not decide them. It decides whether, given the determinations that the President has made and the orders that courts have entered, it may lawfully furnish a service. Every agency makes that judgment about its own conduct every day; it is not an adjudication. As to the contention that FMCS failed to consider whether other statutory authorities would permit arbitration to proceed, the regulatory text expressly contemplates that a requesting party may identify a statutory provision, regulation, court order, or written authorization that permits the service, and OA will consider any such authority a party submits. The comment itself identifies none.

Finally, the comment’s contention that a refusal to arbitrate cannot be raised as an unfair labor practice because there is no panel from which to strike names misreads the interim final rule. The unfair labor practice to which the interim final rule referred is an agency’s refusal to comply with the arbitration provisions of an agreement in effect, 5 U.S.C. 7116(a)(1), (5), and (8), which is complete when the agency refuses to participate, whether or not a panel has issued. Whether that charge lies against an agency that contends it has been excluded from Chapter 71 is, as Comment 3 correctly notes, one of the disputed questions in the pending litigation, and FMCS expresses no view on it. FMCS’s point was and is a narrower one: FMCS declining to furnish a service it cannot lawfully provide does not extinguish whatever rights the requesting party has against the other party, and those rights are enforced in the forums Congress provided for that purpose, not by FMCS.

G. Comment 5

Comment: The comment, submitted by a coalition of Federal-sector labor organizations and twenty-three affiliated organizations that together represent more than 550,000 Federal and postal employees, is the most extensive FMCS received. It contends that the rule takes arbitrability from the arbitrator and that the disclaimer in § 1404.9(b)(4) cannot be reconciled with the authority in § 1404.9(b)(3) to demand the parties’ agreement; that FMCS’s statutory authorities do not reach the rule, because Taft-Hartley excludes the United States as an employer, ADRA governs an agency’s discretionary use of alternative procedures in its own administrative programs, 29 U.S.C. 173(f) concerns FMCS’s own employees acting as neutrals, consent under chapter 71 is given at execution of the agreement, and section 7121 is itself the statutory authorization that sovereign immunity requires; that FMCS cites no decision of the Authority, no court of appeals decision construing section 7121, and no arbitral authority, and has given inconsistent accounts of the basis for its Roster; that the rule compromises FMCS’s neutrality; that the rule’s cost analysis ignores that most Federal-sector agreements name FMCS as the sole source of arbitrators, that parties pay the fee in advance, that, for some grievances (including reduction-in-force grievances), the negotiated procedure is the exclusive administrative forum, that contractual deadlines run during abeyance and FMCS cannot bind arbitrators on timeliness, and that interest under the Back Pay Act compounds daily during delay; that the rule overrides the aggrieved party’s election under 5 U.S.C. 7116(d) and directs parties to an unfair labor practice channel that lacked a Senate-confirmed General Counsel from 2017 until July 2026; that the rule is pretext, because FMCS changed its practice in April 2026, before any published policy existed, in matters that no Executive Order reaches, and the rule’s text contains no Executive Order trigger; and that the August 28 republication, by moving comments from www.regulations.gov to FMCS, removed public comment from a government-wide docket without explanation.

The comment describes four matters (Matters A through D) in which, it states, OA raised compliance questions on its own initiative, conditioned appointment on a union’s submission of legal authority, questioned a bargaining-unit composition issue in a matter involving an agency not covered by any Executive Order, declined to certify a

panel because the agreement was silent on what should occur when one party refuses to participate, and, after asking an agency whether it consented, held a request in abeyance for lack of consent. The comment asks FMCS to withdraw the rule.

Response: FMCS has considered the comment in full and responds to its principal contentions in turn. Several are addressed in section II.B and are not repeated here.

1. *Arbitrability and the parties' agreement.* The contention that the rule takes arbitrability from the arbitrator is addressed in section II.B.1. The comment's narrower point, that § 1404.9(b)(3) cannot authorize OA to request the parties' agreement while § 1404.9(b)(4) disclaims any decision about it, overlooks that OA has always consulted the parties' agreement for purposes that have nothing to do with its validity. Section 1404.12(b) directs OA to apply the ranked-preference process where the agreement "permits each party to separately notify OA of its ranked order of preference, or is silent on the manner of selecting arbitrators"; § 1404.11(c) directs OA to furnish additional panels on unilateral request "if authorized by the applicable collective bargaining agreement"; and § 1404.9(b)(2), both before and after the interim final rule, conditions special services on the agreement's terms. OA reads the agreement to learn what service the parties have asked it to perform. It may also need the agreement to determine whether a court order that refers to a specific agreement applies to the request before it. None of that is a decision that the agreement is or is not valid, and § 1404.9(b)(4) says so.

2. *Statutory authority.* The comment's analysis of Taft-Hartley, ADRA, and chapter 71 is addressed in sections II.B.2 and II.B.3. FMCS adds two points: First, the comment's observation that Taft-Hartley's definition of "employer" excludes the United States establishes that FMCS's duty under 29 U.S.C. 173(a) to mediate disputes in industries affecting commerce does not extend to Federal agencies as employers. It does not establish that FMCS lacks authority to make its Roster available to Federal-sector parties, a service FMCS has provided for more than four decades without objection from any commenter and of which the present commenters have availed themselves, and it does not establish that any statute requires FMCS to provide it.

Second, the comment's observation that FMCS cited no decision of the Authority or of a court of appeals construing section 7121 reflects the nature of the question. The rule does not

construe section 7121; it addresses what FMCS may do when section 7121 does not apply. The comment likewise cites no decision of the Authority, any court, or any arbitrator holding that FMCS must furnish a panel for a proceeding against an agency that the President has excluded from chapter 71. The comment's own observation that consent under chapter 71 is given at the execution of the agreement confirms the point: a collective bargaining agreement is, by statutory definition, one entered into "pursuant to the provisions of this chapter," 5 U.S.C. 7103(a)(8), and the consent it embodies is consent to a statutory procedure. When the chapter ceases to apply to the agency, so does the procedure to which the agency consented.

3. *Neutrality.* The comment contends that the rule seats FMCS as the party that decides whether one side gets a hearing, that, in every matter the comment describes, FMCS decided against the party seeking arbitration, and that FMCS's standing as a neutral will suffer. FMCS takes its neutrality seriously; it is the foundation of the agency's work.

Neutrality, however, is impartiality between labor and management as to the merits of their disputes. It is not indifference to whether the law permits FMCS to act. An agency that furnishes the means for a proceeding the law does not authorize is not neutral; it has taken a side on a contested legal question by acting as though the question were settled. FMCS recognizes that, in the matters that have arisen under the Executive Orders, the party seeking arbitration has been the union and the party asserting a legal bar has been the agency, and that FMCS declining to proceed has therefore affected unions. That reflects the structure of the Executive Orders, not a preference of FMCS. The procedural provisions added by this final rule, written notice of the basis for any hold, an opportunity for each party to respond, periodic review, and refund or credit of the fee, are designed to ensure that OA's handling of threshold questions is transparent to both parties and that the party affected by a hold understands precisely why, and what would change the result.

4. *The parties who name FMCS as sole source; fees paid in advance.* FMCS recognizes that many Federal-sector agreements designate FMCS as the source of arbitrators. That designation reflects the parties' choice to use a service that FMCS provides as a matter of regulation, and it does not confer on the parties a right to have FMCS perform an act that the law does not permit. FMCS cannot make itself able to

provide a service by having been named in an agreement, any more than a court can acquire jurisdiction by being named in a forum-selection clause. The comment's point about fees is well taken, and this final rule adopts, in § 1404.9(b)(5), the fee relief that the April memorandum contemplated, and that OA has offered in practice, but that the interim final rule's text did not include.

The comment is also correct that there is no appendix A to part 1404. The appendix that formerly contained the fee schedule was removed in 2022, *Rescission of the Arbitration Policy; Schedule of Fees*, 87 FR 69165 (Nov. 18, 2022), and FMCS's current fees, which took effect October 1, 2023, are published on its website. The interim final rule's statement that the rule does not alter "the fee schedule in appendix A to part 1404" should have referred to FMCS's published schedule of fees, and this final rule makes conforming technical amendments to §§ 1404.7 and 1404.9(g).

5. *Exclusive forums; reductions in force.* The comment observes that for a bargaining unit employee covered by an agreement that includes reduction-in-force procedures, the negotiated procedure is the exclusive administrative forum for a grievance over those procedures. That is correct where chapter 71 applies and the agreement is in effect, and, in that circumstance, FMCS will issue a panel on unilateral request. The comment's concern arises only where the agency has been excluded from chapter 71. But the exclusivity on which the comment relies is itself a function of section 7121(a)(1) and of the employee's coverage by an agreement under it; when neither applies, the employee's reduction-in-force appeal rights under 5 CFR part 351 are unaffected by any agreement. The comment thus describes a circumstance in which either the negotiated procedure is available and FMCS will furnish the panel, or the negotiated procedure is not the exclusive forum. The rule does not leave any employee without a forum.

6. *Deadlines, delay, and the Back Pay Act.* The comment contends that contractual deadlines run during abeyance, that FMCS cannot bind an arbitrator on timeliness, and that delay increases the interest payable under the Back Pay Act, 5 U.S.C. 5596(b)(2), at the agency's expense. FMCS agrees that it cannot bind arbitrators or the Authority on questions of timeliness. New § 1404.9(b)(5) codifies the preservation of the original date of receipt, which was previously a matter of guidance only, so that a party that has timely

submitted its request to FMCS has a record of having done so. Whether an agreement's deadline for "requesting a panel" is satisfied by a timely request that FMCS has not yet acted on is a question of contract that the comment's own argument assigns to the arbitrator; FMCS notes only that the comment identifies no case in which an arbitrator has penalized a party for FMCS's processing time, and FMCS would expect any such contention to be received with skepticism.

As to Back Pay Act interest, interest accrues on an award of back pay from the date of the personnel action regardless of the forum or the time the proceeding takes, and it is paid only where the employee prevails. Interest against the United States, moreover, is recoverable only where Congress has expressly provided for it, *Libr. of Cong. v. Shaw*, 478 U.S. 310, 314–18 (1986), and the Back Pay Act waives immunity only where an "appropriate authority" finds an unjustified or unwarranted personnel action, 5 U.S.C. 5596(b)(1). OPM's regulation recognizes an arbitrator as an appropriate authority when acting "in a grievance or arbitration proceeding," 5 CFR 550.803, which presupposes a forum that is itself lawfully constituted. An arbitrator whose authority rests on nothing but a terminated agreement with an agency excluded from chapter 71 does not occupy that office, and an award by such an arbitrator would not be payable from appropriated funds in any event. *Richmond*, 496 U.S. at 424–28.

The comment's argument that delay increases the Government's liability assumes a proceeding that will go forward and an award that will issue. Where FMCS has authority to furnish the panel, the rule as revised produces no delay; where it does not, no award will issue through FMCS's process whether FMCS acts promptly or not, and the employee's remedy, if any, lies elsewhere. FMCS has nonetheless considered the comment's point that delay has costs for the parties and for the Government, and the periodic review and reconsideration provisions in § 1404.9(b)(5) are intended to ensure that a request does not remain in abeyance longer than the impediment that caused the hold.

7. Section 7116(d) and the unfair labor practice channel. The comment contends that, by directing parties to the Authority, the rule overrides the aggrieved party's election of forum under 5 U.S.C. 7116(d), and that the unfair labor practice channel has not functioned reliably for most of the past decade. FMCS does not direct any party anywhere. The interim final rule

observed that FMCS declining to furnish a service does not affect the parties' ability to pursue remedies before the Authority, a court, or another tribunal with jurisdiction, and gave the unfair labor practice process as one example. 91 FR at 49276. Whether a particular charge lies, whether the election in section 7116(d) has been made, and whether the Authority's General Counsel will issue a complaint are matters for the Authority, and the comment's account of the Authority's General Counsel vacancy, which the comment states ended in July 2026, concerns an agency that FMCS does not supervise. FMCS's point is the limited one stated in response to Comment 4: FMCS's action on a request does not extinguish any right the requesting party has against the other party.

8. Pretext and the April 22, 2026, memorandum; Matters A through D. The comment contends that the rule is a pretext for a screening authority FMCS began exercising in April 2026 for undisclosed reasons, and describes four matters in support. FMCS does not comment on the particulars of individual matters, which the comment has anonymized and which may be the subject of litigation, except to note the following. In Matter A, as the comment itself states, FMCS processed the panel request and left to the parties how to proceed. In Matter B, OA asked a single question, received an answer the same afternoon, and proceeded the same day; the comment's own description of the question indicates that it concerned whether the subdivision involved fell within the exclusion in Executive Order 14251 for subdivisions whose primary duty is information resources management, and OA asked it because an Executive Order exclusion would bear on OA's authority to proceed, not because OA proposed to decide a unit-composition question reserved to the Authority.

FMCS acknowledges that the communications the comment describes in Matters B and C should have identified their author and stated their basis, and new § 1404.9(b)(5) requires written notice of the basis for any decision to decline or hold a request. As to Matter C, FMCS agrees with the comment that an agency's contention that it had no duty to bargain, and therefore that the grievance was not arbitrable, is a question for the arbitrator and not a basis for OA to withhold a panel, and this final rule revises § 1404.9(b)(3) to say so. As to Matter D, OA's inquiry whether an agency covered by the Executive Orders consented to the arbitration was not a solicitation of an objection; where the

agency has been excluded from chapter 71 and the agreement terminated, the agency's consent is the only potential remaining source of authority for the proceeding, and whether it has been given is the threshold question itself. OA's communication in that matter stated its basis, preserved the request date, and offered a refund or credit, each of which this final rule now codifies.

The rule is not a pretext. The sequence the comment describes, in which requests involving excluded agencies began to arrive in the spring of 2026, OA sought guidance, the General Counsel issued it in April, and FMCS codified the governing standard by rule in August, is the sequence by which an agency ordinarily responds to a new and recurring question. The rule's text does not contain an "Executive Order trigger" because the principle it codifies—that FMCS may not furnish a service that would be inconsistent with law, a court order, or its own authority—is not limited to the Executive Orders, and FMCS cannot anticipate every circumstance in which a court order or a change in law would preclude a service. The Executive Orders are the occasion for the rule, not the measure of it. This final rule nonetheless responds to the comment's concern about breadth by stating, in the regulatory text, what does not warrant declining or holding a request.

9. The republication. The comment contends that the August 28 republication moved public comment from a government-wide docket to the office that wrote the rule, without explanation. The explanation is the one the republication gave: a technical error. Rather than risk that an interested person would be turned away, FMCS republished the rule in full, directed comments to its Office of General Counsel by email and mail, extended the period to September 28, and committed to post all comments on its public website. FMCS accepted every comment received through either channel, including those submitted to www.regulations.gov before the docket closed. All five comments FMCS received, including Comment 5, have been posted on FMCS's website, and FMCS confirms its receipt of each. The comment identifies no person who was unable to comment and no comment that was not received.

H. Procedural Objections

Comments: Comments 1, 4, and 5 contend that FMCS lacked good cause under 5 U.S.C. 553(b)(B) to issue the rule without prior notice and comment and under 5 U.S.C. 553(d)(3) to make it effective upon publication. They argue

that the good cause exception is narrowly construed and reserved for emergencies, citing *Mack Trucks, Inc. v. E.P.A.*, 682 F.3d 87 (D.C. Cir. 2012), *Am. Pub. Gas Ass'n v. D.O.E.*, 72 F.4th 1324 (D.C. Cir. 2023), *U.S. Steel Corp. v. E.P.A.*, 595 F.2d 207 (5th Cir. 1979), *N.J. Dep't of Env'tl. Prot. v. E.P.A.*, 626 F.2d 1038 (D.C. Cir. 1980), and *Util. Solid Waste Activities Grp. v. E.P.A.*, 236 F.3d 749 (D.C. Cir. 2001); that an agency's desire to eliminate uncertainty is not good cause, citing *California v. Azar*, 911 F.3d 558, 576 (9th Cir. 2018); that FMCS cited no instance of confusion; that FMCS's prior amendments to part 1404 used notice and comment; that the rule is substantive rather than clarifying; and that four months of unchanged operation under the April memorandum is not an emergency. Comment 5 adds that the original rule was dated the same day FMCS answered a complaint challenging the April memorandum. Comment 4 also notes that FMCS's statement of good cause recites all three statutory grounds.

Response: FMCS has considered these objections and concludes that the interim final rule was procedurally proper. In any event, the procedure FMCS followed—publication of the rule with a request for comments, republication with an extended period when a technical problem arose, and this final rule responding to every comment received and revising the rule in response—has afforded the commenters the opportunity to participate that they seek, and none identifies an argument it was prevented from making or any respect in which FMCS's consideration of its comment was impaired.

1. Rules of agency procedure and practice. The interim final rule invoked the good cause exception in section 553(b)(B). FMCS notes that the rule is also, independently, a rule of “agency organization, procedure, or practice” within the meaning of 5 U.S.C. 553(b)(A), to which the notice-and-comment requirement does not apply. Part 1404, subpart C, is entitled “Procedures for Arbitration Services.” Section 1404.9 governs the procedures by which parties request, and OA processes, lists and panels. The rule does not alter any party's rights under chapter 71 or under any agreement; it addresses how FMCS processes requests for a service it provides.

The commenters contend that the rule is substantive because declining a service has consequences for the requesting party. A rule of agency procedure does not become substantive because its application affects the persons subject to it; the question is

whether the rule “encodes a substantive value judgment” on the matters the agency regulates or instead governs the manner in which the agency conducts its own proceedings. *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326–28 (D.C. Cir. 1994); *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987). FMCS has itself treated amendments to part 1404 as rules of agency procedure and practice exempt from notice and comment on that basis. 87 FR 69165, 69166 (Nov. 18, 2022). The rule makes no judgment about the merits of any grievance, the validity of any agreement, or the rights of any party; it addresses the circumstances in which FMCS will perform an administrative act, which is a matter of FMCS's own procedure and practice. FMCS does not rest this final rule on section 553(b)(A) alone, because it has, in any event, provided notice and an opportunity for comment and has responded to the comments received, but the commenters' characterization of the rule as substantive is not one FMCS accepts.

2. Good cause. The commenters characterize FMCS's basis for good cause as a desire to eliminate “legal uncertainty” or “confusion” in the abstract. It was neither. By the summer of 2026, OA was receiving unilateral requests for panels and appointments in proceedings against agencies that the President had excluded from chapter 71 and that had terminated the applicable agreements; the requesting parties cited former § 1404.9(b) as obligating FMCS to proceed; and that regulatory language had become the basis of litigation against FMCS. FMCS was thus confronted, request by request, with a choice between furnishing panels and appointing arbitrators for proceedings it had concluded it lacked authority to facilitate, and declining to do so under a regulation that, read literally, said every request “will be honored.”

Neither course was acceptable for the months a notice-and-comment proceeding would require. Furnishing the panels would have required FMCS to act contrary to the President's determinations and, in FMCS's judgment, without lawful authority; declining them under the unamended regulation would have invited exactly the charge the commenters now level—that FMCS was acting contrary to its own rule. Prior notice and comment were impracticable because the requests could not be held in suspense without decision for that period, and contrary to the public interest because every panel issued in the interim would have constituted a tribunal that FMCS had concluded no statute authorized. The commenters' authorities involved

agencies that sought to avoid comment on policy choices committed to their discretion or that created their own urgency through delay. FMCS did neither. The circumstance that required the amendment—the exclusion of agencies employing a substantial share of the Federal workforce and the termination of their agreements—was created by Executive Orders that FMCS did not issue, and the amendment was made as soon as the recurring nature of the problem became apparent. Comment 5's observation that the rule was signed on the day FMCS answered a complaint challenging the April memorandum confirms, rather than undermines, that the dispute over the regulatory language was concrete and immediate.

Comment 4 correctly notes that FMCS's statement recited all three grounds in section 553(b)(B). FMCS's finding rested principally on impracticability and the public interest, for the reasons just stated. FMCS also notes that where, as here, the rule is one of agency procedure and practice, notice and comment are “unnecessary” in the statutory sense.

3. Prior rulemakings. That FMCS amended part 1404 through notice and comment in 1978, 1997, 2008, and 2019 shows that FMCS uses notice and comment when circumstances require. None of those rulemakings was conducted while FMCS was receiving requests that it had concluded it could not lawfully honor. The existence of prior notice-and-comment rulemakings on other occasions is not evidence that good cause was lacking on this one.

4. Immediate effectiveness. The same considerations supported FMCS's finding of good cause under section 553(d)(3) to make the rule effective on publication. FMCS adds that the amendments made by this final rule, which add procedural protections for requesting parties and provide for refunds and credits, relieve restrictions within the meaning of 5 U.S.C. 553(d)(1) and may be made effective on publication on that basis as well.

5. Cure and the absence of prejudice. Even if the commenters were correct that FMCS lacked good cause, the APA directs that “due account shall be taken of the rule of prejudicial error.” 5 U.S.C. 706. An interim final rule accompanied by a request for comments satisfies the APA's notice requirement where the agency subsequently issues a final rule after considering the comments received; the APA does not require a separate notice of proposed rulemaking. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 685–86 (2020). The commenters filed comprehensive comments within

an extended comment period, FMCS has considered them in full, this document responds to each, and FMCS has revised the rule in response to several of the points they raise. No commenter identifies anything it would have said in response to a notice of proposed rulemaking that it did not say in response to the interim final rule.

6. *Request for withdrawal and a new proposal.* FMCS declines to withdraw the rule and issue a notice of proposed rulemaking. The commenters have had and used a comment period of more than seven weeks on every aspect of the rule. A second comment period on the same amendments would serve no purpose the first did not, and the commenters identify none beyond a generalized interest in public participation that the interim final rule's request for comments satisfied. FMCS will, of course, consider any petition for rulemaking directed to the rule as revised.

III. Changes Made in This Final Rule and Adoption of the Interim Final Rule as Final

Having considered the comments, FMCS adopts the interim final rule published at 91 FR 49273 on August 4, 2026, and republished at 91 FR 55473 on August 28, 2026, as a final rule with the following changes.

Section 1404.9(b)(3). FMCS revises paragraph (b)(3) to add three sentences. The first provides that the inquiry under the paragraph is limited to whether FMCS may lawfully provide the requested service. The second provides that a party's contention that a grievance lacks merit, is untimely, or is not arbitrable under the parties' agreement, or a party's disagreement with a grievance or unwillingness to participate in the arbitration, does not by itself establish that providing the requested service would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority. The third provides that OA will afford each party a reasonable opportunity to respond to information submitted by the other party. These additions codify the limits that the interim final rule's preamble described and that the commenters asked FMCS to state in the regulatory text. They do not narrow FMCS's authority to decline a service that it may not lawfully provide; they confirm that an objection to the grievance itself is not a basis for doing so.

Section 1404.9(b)(5). FMCS adds a new paragraph (b)(5) governing the process that follows a decision to decline a requested service or to hold a request in abeyance. OA will notify the

parties in writing of the action taken and the basis for it. A request held in abeyance retains its original date of receipt. OA will reconsider a held request upon a party's submission of a court order, agreement, authorization, or other information bearing on the basis for the hold, and will periodically review requests held in abeyance. A party that paid a fee for a request that OA declines or holds in abeyance may, on request, receive a refund or a credit toward future FMCS arbitration services. These provisions codify, and extend to all requests, commitments that FMCS's April 22, 2026, memorandum made as a matter of guidance for requests involving agencies identified in the Executive Orders and that the commenters correctly observed did not appear in the interim final rule's text, together with the written-notice, reconsideration, and review provisions proposed in Comment 3.

Section 1404.12(b). FMCS adds a sentence providing that a party's failure to submit its ranked preferences does not by itself establish that an appointment would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority. The limitation added to § 1404.12(b) by the interim final rule applies only where OA has determined under § 1404.9(b)(3) that the appointment may not lawfully be made.

Sections 1404.7 and 1404.9(g). FMCS makes technical amendments to replace references to a schedule of fees "in the appendix to this part," which no longer exists, with references to the schedule of fees published by FMCS. These amendments make no change to any fee.

The amendments to §§ 1404.9, 1404.10, 1404.11, and 1404.12 made by the interim final rule have been in effect since August 4, 2026, and remain in effect as revised by this document. The April 22, 2026, memorandum will be conformed to the rule as revised; to the extent of any inconsistency, the regulation controls.

IV. Regulatory Analyses

A. Administrative Procedure Act

The amendments made by this final rule are effective on publication. The amendments add procedural protections for parties requesting FMCS arbitration services and provide for the refund or credit of fees, and therefore relieve restrictions within the meaning of 5 U.S.C. 553(d)(1). FMCS also finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective on publication, because they clarify and narrow a rule that is already in effect and delaying their effectiveness would

postpone, without any countervailing benefit, protections that respond to the comments received. The amendments are a logical outgrowth of the interim final rule and the comments on it.

B. Severability

FMCS intends the provisions of this final rule to be severable. If any provision of this rule, or the application of any provision to any person or circumstance, is held invalid, FMCS intends that the remainder of the rule and its application to other persons or circumstances remain in effect to the fullest extent permitted by law. In particular, FMCS intends that the threshold-inquiry provisions of § 1404.9(b)(3) and (4) and the conforming provisions of §§ 1404.10 through 1404.12 remain in effect independently of the procedural provisions of § 1404.9(b)(5), and that each ground on which OA may decline or hold a request (inconsistency with applicable law, with a court order, or with FMCS's statutory or regulatory authority) operate independently of the others.

C. Regulatory Review

FMCS has examined this final rule under Executive Orders 12866 and 13563. The rule adopts, with limited changes that add procedural protections and relieve restrictions, an interim final rule that clarified FMCS's procedures for processing requests for arbitration services and imposed no new compliance obligations on any person. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. This rule is not an Executive Order 14192 regulatory action because it imposes no more than de minimis costs; to the extent the refund and credit provisions have any cost effect, they reduce costs to the public.

FMCS has considered the costs and benefits of the rule, including the costs identified by the commenters. The commenters contend that the interim final rule understated the costs of delay to parties whose requests are held in abeyance, including the cost of preparing responses to threshold inquiries, the running of contractual deadlines, the accrual of interest on back pay, and the expense of pursuing alternative remedies. FMCS has considered each of these. As explained in section II, the rule as revised produces no delay in the processing of requests that does not present a question of FMCS's authority, which are the overwhelming majority of requests OA receives; and, where a request does

present such a question, the cost of the resulting delay is attributable to the underlying legal dispute between the parties, which FMCS did not create and cannot resolve, rather than to FMCS's declining to proceed. The procedural provisions added by this final rule reduce the costs the commenters identify by requiring written notice of the basis for any hold, preserving the request date, providing for reconsideration and periodic review, and refunding or crediting fees. FMCS expects the cost to FMCS of implementing those provisions to be minimal and to be absorbed within existing OA resources. The benefits of the rule are those identified in the interim final rule: clarity regarding FMCS's obligations when presented with requests raising threshold legal questions, assurance that FMCS administers its services consistent with law, and, as revised, a transparent and reviewable process for the small number of requests that present such questions.

D. Regulatory Flexibility Act

Because FMCS issued the interim final rule without prior notice and comment under the good cause exception in 5 U.S.C. 553(b)(B), and because the rule is one of agency procedure and practice under 5 U.S.C. 553(b)(A), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, for an initial or final regulatory flexibility analysis do not apply. In any event, the General Counsel of FMCS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule governs FMCS's own procedures for processing requests for arbitration services, imposes no new compliance, reporting, or recordkeeping obligations on any entity, and does not alter any fee. To the extent a small entity, such as a local labor organization, requests FMCS arbitration services, the rule may affect whether FMCS provides the requested service only in the limited circumstance in which FMCS determines that doing so would be inconsistent with applicable law, a court order, or FMCS's authority, and, in that circumstance, the entity may obtain a refund or credit of its fee.

E. Federalism

FMCS has analyzed this final rule under Executive Order 13132 and has determined that 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. The rule governs

FMCS's own procedures and does not preempt State law or impose any obligation on State or local governments.

F. Civil Justice Reform

This final rule has been reviewed under section 3(a) and (b)(2) of Executive Order 12988 and meets the applicable standards. The rule states the circumstances in which FMCS may decline or hold a request for arbitration services, states what does not warrant that action, and provides for written notice and reconsideration, thereby minimizing ambiguity and the potential for litigation.

G. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more, adjusted annually for inflation, in any one year. Accordingly, no written statement under the Unfunded Mandates Reform Act, 2 U.S.C. 1532, is required.

H. Paperwork Reduction Act

This final rule does not impose a new collection of information within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, because it does not require standardized reporting or recordkeeping by the public. Information that a party may submit in response to a threshold inquiry under § 1404.9(b)(3) is submitted in the course of an individual request for services and does not constitute a collection of information. If FMCS later revises Form R-43 or establishes a standardized submission requirement to implement threshold inquiries, FMCS will evaluate whether approval from the Office of Management and Budget is required.

I. Congressional Review Act

FMCS will submit this final rule to Congress and the Comptroller General in accordance with 5 U.S.C. 801. The Office of Information and Regulatory Affairs has determined that this rule is not a "major rule" within the meaning of 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Arbitration, Labor management relations.

For the reasons stated in the preamble, the Federal Mediation and Conciliation Service adopts as final the interim final rule published August 4, 2026, at 91 FR 49273 and republished August 28, 2026, at 91 FR 55473, that

amended 29 CFR part 1404, with the following changes:

PART 1404—ARBITRATION SERVICES

- 1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

Subpart B—Roster of Arbitrators; Admission and Retention

- 2. Revise § 1404.7 to read as follows:

§ 1404.7 Listing fee.

All arbitrators will be required to pay an annual fee for listing on the Roster. The amount of the fee is set forth in the schedule of fees published by FMCS.

Subpart C—Procedures for Arbitration Services

- 3. Amend § 1404.9 by:
 - a. Revising paragraph (b)(3);
 - b. Adding paragraph (b)(5); and
 - c. Revising paragraph (g).

The revisions and addition read as follows:

§ 1404.9 Procedures for requesting arbitration lists and panels.

* * * * *

(b) * * *

(3) OA may conduct a limited threshold inquiry to determine whether issuing a panel, making a direct appointment, or providing related arbitration services would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority. The inquiry under this paragraph (b)(3) is limited to whether FMCS may lawfully provide the requested service. A party's contention that a grievance lacks merit, is untimely, or is not arbitrable under the parties' agreement, or a party's disagreement with a grievance or unwillingness to participate in the arbitration, does not by itself establish that providing the requested service would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority. OA may request from the parties the agreement, statutory provision, regulation, court order, written authorization, or other information necessary to determine whether OA may provide the requested service, and will afford each party a reasonable opportunity to respond to information submitted by the other party. Following such inquiry, FMCS may issue the panel or appointment, decline to provide the requested service, hold the request in abeyance, or take

other administratively appropriate action.

* * * * *

(5) If OA declines to provide a requested service or holds a request in abeyance under paragraph (b)(3) of this section, OA will notify the parties in writing of the action taken and the basis for it. A request held in abeyance retains its original date of receipt by OA. OA will reconsider a request held in abeyance upon a party's submission of a court order, agreement, written authorization, or other information bearing on the basis for the abeyance, and will periodically review requests held in abeyance. A party that has paid a fee for a request that OA declines or holds in abeyance may, upon request, receive a refund of the fee or a credit toward future FMCS arbitration services.

* * * * *

(g) OA will charge a fee for all requests for lists, panels, and other major services. Payments for these services must be received with the request for services before the service is delivered and may be paid by either labor or management or both. A schedule of fees is published by FMCS.

■ 4. Amend § 1404.12 by revising paragraph (b) to read as follows:

§ 1404.12 Selection by parties and appointment of arbitrators.

* * * * *

(b) Where the parties' collective bargaining agreement permits each party to separately notify OA of its ranked order of preference, or is silent on the manner of selecting arbitrators, FMCS will ask each party to advise OA of its order of preference by numbering each name on the panel and submitting the numbered list in writing to OA. Upon receiving the rank order from one party, OA will notify the other party that it has fourteen (14) days in which to submit its selections. Where both parties respond, the name that has the lowest combined number will be appointed. If the other party fails to respond, the first party's choice will be honored. This paragraph is subject to § 1404.9(b) and does not require OA to make an appointment where OA determines that the appointment would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority. A party's failure to submit its ranked preferences does not by itself establish that an appointment would be inconsistent with applicable law, a court order, or FMCS's statutory or regulatory authority.

* * * * *

Dated: October 27, 2026.

Anna Davis,

General Counsel, Federal Mediation and Conciliation Service.

[FR Doc. 2026-22083 Filed 10-28-26; 8:45 am]

BILLING CODE 6732-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2026-1075]

RIN 1625-AA00

Safety Zone; Firework Display; Cumberland River, Hendersonville, TN

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for certain navigable waters of the Sanders Ferry, near Hendersonville, TN. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards during a fireworks show at various times from October 29, 2026, through October 31, 2026. This rulemaking prohibits entry of vessels or persons into this safety zone during enforcement periods unless specifically authorized by the Captain of the Port, Ohio Valley or their designated representative.

DATES: This rule is effective from 7:15 a.m. local time on October 29, 2026, through 5:30 p.m. local time on October 31, 2026.

ADDRESSES: To view available documents, go to <https://www.regulations.gov> and search for USCG-2026-1075.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact MST3 Zachary T. Epps, Sector Ohio Valley Waterways Management Division, U.S. Coast Guard; telephone (206) 815-7006, or email STL-SMB-MSDNASHVILLE@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

On July 17, 2026, an organization notified the Coast Guard that it will

sponsor two fireworks displays launched from a barge on the Cumberland River near Sanders Ferry Park in Hendersonville, Tennessee. The first fireworks display (including a 15-minute safety buffer before and afterwards) is scheduled to occur on October 29, 2026, from approximately 7:15 a.m. until 8:15 a.m., Central Time. The second fireworks display is scheduled to occur on October 31, 2026, from approximately 4:45 p.m. until 5:30 p.m., Central Time. On October 16, 2026, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Cumberland River, Hendersonville, TN (91 FR 65698). In that NPRM, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this fireworks display.

Under the authority in 46 U.S.C. 70034, the COTP has determined that this rule is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with the fireworks. No vessel or person will be permitted to enter the safety zone without obtaining permission from COTP or their designated representative.

Because of the hazards associated with this event, 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** because it is impracticable and contrary to the public interest. We must establish this safety zone by October 29, 2026, to protect personnel, vessels, and the marine environment.

III. Discussion of Comments and the Rule

During the comment period that ended on October 23, 2026, we received two comments. Two commenters identified inconsistencies in the NPRM concerning the dates and times of the planned fireworks displays and associated safety-zone enforcement periods. Specifically, the commenters noted that the NPRM contained conflicting references to October 30 and October 31 for the second enforcement period, as well as inconsistent morning enforcement periods for October 29. One commenter also requested clarification regarding the difference between the overall effective period and the periods when the safety zone would be actively enforced; the basis for pre- and post-display safety buffers; the applicable local time zone; notice to mariners; and procedures for requesting entry into the safety zone.

In response to these comments, the Coast Guard has revised the

enforcement periods to accurately reflect the scheduled fireworks displays. The safety zone will be enforced from 7:15 a.m. until 8:15 a.m., on October 29, 2026, and from 4:45 p.m. until 5:30 p.m., on October 31, 2026. It is always standard that in Coast Guard safety zone rulemaking documents refer to the local time at the location of the safety zone, in this case that is Central Daylight Time (CDT). These enforcement periods include a 15-minute safety buffer before and after each fireworks display to allow for final safety preparations, fireworks-launch operations, monitoring for falling debris, post-display safety assessment, and cleanup.

The Coast Guard has also corrected the conflicting references to an October 30 enforcement period and clarified that the safety zone will not be continuously enforced between the two specified enforcement periods. In other words, this safety zone will be enforced for one hour on October 29, 2026, from 7:15 a.m. until 8:15 a.m., and 45 minutes on October 31, 2026, from 4:45 p.m. until 5:30 p.m. The Coast Guard will provide notice of enforcement through a Broadcast Notice to Mariners on VHF-FM channel 16. The Broadcast Notice to Mariners will include information regarding the enforcement periods and may include sponsor contact information for event-related coordination, as appropriate. Only the Captain of the Port (COTP), Ohio Valley or the COTP's designated representative may authorize entry into the safety zone.

This rule establishes a safety zone on all navigable waters of the Cumberland River from mile marker 221.7 to mile marker 222 near Sanders Ferry Park in Hendersonville, Tennessee. During the stated enforcement periods, no vessel or person may enter the safety zone without obtaining permission from COTP or the COTP's designated representative.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Coast Guard certifies that, although some small entities may intend to transit the safety zone above, this rule will not have a significant economic impact on a substantial number of small entities. This safety zone will only impact a small, designated area for one hour on October 29, 2026, and for 45 minutes on October 31, 2026. It will be enforced during times when vessel traffic is normally low. In addition, the Coast Guard will issue a Broadcast Notice to Mariners via VHF FM marine channel 16, which will allow small entities to adjust their transit plans, and the rule allows vessels to request permission to enter the zone from the COTP.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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).

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) establish or increase size 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.T08–1075 to read as follows:

§ 165.T08–1075 Safety Zone; Cumberland River, Hendersonville, TN.

(a) *Location.* The following area is a safety zone: all navigable waters of the Cumberland River from mile marker 221.7 to mile marker 222.

(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 (COTP), Ohio Valley in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact COTP or COTP's representative on VHF-FM channel 16 or by telephone at (800) 253-7465. Those in the safety zone must comply with all lawful orders or directions given to them by COTP or COTP's designated representative.

(d) *Enforcement periods.* This section is enforced from 7:15 a.m. until 8:15 a.m., on October 29, 2026, and from 4:45 p.m. until 5:30 p.m., on October 31, 2026.

Bradford E. Clark,

*Commander, U.S. Coast Guard, Acting,
Captain of the Port, Ohio Valley.*

[FR Doc. 2026-22078 Filed 10-28-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 304, 305, 307, 308, 309, and 310

RIN 0970-AD39

Reducing Bureaucracy and Burden for Child Support Enforcement Programs

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Final rule.

SUMMARY: This final rule amends the Child Support regulations that were unnecessary or obsolete in the following sections: State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, Program Performance Measures, Standards, Financial Incentives, and Penalties, Computerized Support Enforcement Systems, Annual State Self-Assessment Review and Report, Tribal Child Support Enforcement (IV-D) Program, and Computerized Tribal IV-D Systems and Office Automation.

DATES: This rule is effective on November 30, 2026.

FOR FURTHER INFORMATION CONTACT: Adam N. Jones, Deputy Chief of Staff, Immediate Office of the Assistant

Secretary, Administration for Children and Families, Department of Health and Human Services, Washington, DC, 202-417-0115 or *Deregulation@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This rule is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, which “may be necessary for efficient administration of the functions for which the Secretary is responsible under the Act.” This rule is also published in accordance with section 455(f) of the Act, 42 U.S.C. 655(f). Section 455(f) authorizes the Secretary to issue regulations governing the grants to Tribes and Tribal organizations operating child support programs.

II. Background

The Child Support Enforcement Program, established under Title IV-D of the Social Security Act, is a Federal-State-Tribal partnership designed to help children receive financial support from their noncustodial parents. The program operates through State and Tribal child support agencies that provide child support enforcement services including locating noncustodial parents, establishing paternity, establishing and enforcing support orders, and collecting and distributing child support payments. Since the program's establishment in 1975, OCSE has worked with States and Tribes to improve the effectiveness and efficiency of child support program operations. Over time, Congress has amended Title IV-D to expand and refine program responsibilities, and ACF has promulgated implementing regulations to support consistent national administration of the program while providing flexibility to States and Tribes. *See, e.g.*, 40 FR 27156 (June 26, 1975) (initial implementation of the Child Support Enforcement Program regulations); 54 FR 15761 (Apr. 19, 1989) (revising interstate and enforcement procedures to improve program effectiveness); 57 FR 30658 (July 10, 1992) (implementing Family Support Act amendments and strengthening automated processing and distribution requirements); 63 FR 44795 (Aug. 21, 1998) (implementing provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 related to program automation); 69 FR 16638 (Mar. 30, 2004) (implementing direct funding of Tribal Child Support Enforcement

programs); and 81 FR 93492 (Dec. 20, 2016) (modernizing child support program operations and emphasizing family-centered enforcement approaches).

ACF has determined many of these regulations were originally adopted during periods of substantial statutory expansion of the Title IV-D program, when ACF sought to provide introductory program descriptions, restate newly enacted statutory requirements, promote national consistency during early implementation efforts, or codify administrative practices that were not yet well established among State agencies. *See, e.g.*, 40 FR 27156, 27160-61 (describing the need for foundational regulations to establish uniform State plan requirements during initial implementation of Title IV-D); 57 FR 30658, 30659-60 (explaining that several provisions were intended to clarify statutory responsibilities and standardize administration among States); 63 FR 44795, 44795-96 (stating that certain amendments were intended to codify statutory changes enacted by Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and provide operational guidance to States during implementation); and 81 FR 93492, 93493-95 (describing the purpose of regulatory amendments as improving program flexibility and modernizing existing practices). In several instances, prior preambles explained that the regulations were intended primarily to clarify statutory requirements, provide organizational context, or assist States during transitions following major legislative amendments.

ACF has also determined that many of those rationales no longer support maintaining these provisions in the Code of Federal Regulations (CFR) because the Title IV-D program has matured substantially and State and Tribal agencies now operate within a well-established statutory and administrative framework supported by decades of program guidance, policy issuances, automated systems requirements, and operational practice. In addition, Congress has amended Title IV-D numerous times to codify core program requirements directly in statute, thereby reducing any independent regulatory effect of certain provisions. As a result, ACF has concluded that retaining regulations that restate statutory text, provide historical or descriptive information without imposing substantive obligations, or address matters more appropriately administered through sub-regulatory guidance and technical

assistance, is no longer necessary to ensure effective administration of the Title IV–D program.

Rescinding such regulations is also consistent with the President's directives in Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative* (Feb. 19, 2025), which seeks to restore the constitutional separation of powers by ensuring regulations are authorized by federal statutes and ending federal bureaucratic overreach, and Executive Order 14192, *Unleashing Prosperity Through Deregulation*, which requires that for every one new regulation issued, at least ten existing regulations must be identified for repeal.

This final rule therefore rescinds multiple regulations in 45 CFR Chapter III that ACF has determined are duplicative, unnecessary, or obsolete. Duplicative regulations are those that include requirements stated elsewhere, such as in statute, and that ACF has determined are unnecessary as they do not impose new or additional requirements on State or Tribal child support programs. Obsolete regulations are those that are outdated, have been superseded by law or are no longer relevant to the operation of the child support program. This final rule also rescinds regulations that are better suited to a different format, *i.e.*, as a sub-regulatory guidance document, such as those that include technical details that belong in programmatic instruction. Lastly, this final rule makes technical edits throughout Chapter III to remove or replace references to those sections of the Child Support regulations that have been rescinded.

This final rule does not alter the underlying statutory obligations applicable to State or Tribal child support agencies. Where statutory requirements remain in effect, affected agencies will continue to be bound by those requirements independent of the rescission of duplicative regulatory text. ACF further notes that rescinding unnecessary or duplicative regulations may improve regulatory clarity by reducing confusion regarding whether regulatory provisions impose obligations distinct from those already established by statute.

Severability

The provisions of this final rule are intended to be severable, such that in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid. None of the provisions contained herein are central

to the overall final rule, nor are any provisions dependent on the validity of other, separate provisions.

III. Summary of Public Comments

The Reducing Bureaucracy and Burden for Child Support Enforcement Programs Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on June 18, 2026 (91 FR 36779). The comment period ended on July 20, 2026. ACF received 31 comments on the NPRM. Of those, twelve were from State child support agencies, one was from a county child support agency, one was from a Tribal child support agency, two were from national child support organizations, seven were from individuals, and four were from national advocacy organizations. Several commenters supported the proposals in the NPRM. Other commenters generally supported the proposed rule but recommended retaining certain provisions in the CFR rather than removing all of the proposed sections. Several commenters opposed the NPRM in its entirety, and one commenter provided comments not germane to the NPRM.

Several commenters expressed support for the removal of regulatory sections that merely restated statutory language or provided general overviews of specific parts of the program. These commenters noted that eliminating duplicative or explanatory provisions helps streamline the regulations, reduce unnecessary text, and improve clarity by ensuring that the CFR focuses on operational and enforceable requirements rather than reiterating material already established in statute. Those commenters generally agreed that this approach enhances transparency and modernizes the regulatory structure by aligning it more closely with the statutory framework without altering existing program obligations.

Commenters expressed opposition to the removal of §§ 302.32, 302.33, 302.38, and 304.20 stating that these provisions offer clarity that supports consistent and accurate program operations. Although the underlying statutory requirements remain in place, commenters explained that removing these regulatory sections could lead to confusion, uneven implementation across States, and misinterpretation of key responsibilities. Based on these concerns, the Department will retain §§ 302.32, 302.33, 302.38, and 304.20 to preserve clarity, continuity, and effective administration of the child support program.

ACF received one comment which included proposed amendments, which were not included in the NPRM, to 45

CFR 301.13, 302.12, 302.35, 302.56, 302.85, 303.3, 303.4, 303.5, 303.7, 303.11, 303.21, 303.30, 303.101, 303.109, 304.15, 304.21, 304.23, 304.40, 305.60, 305.61, 305.63, 307.1, 307.5, 307.7, 307.10, 307.11, 307.13, 307.15, 307.20, 307.25, 308.1, and 308.2. We acknowledge receipt of the comment and will consider it in the development of future rules in this Chapter.

IV. Section-by-Section Discussion of Comments and Regulatory Provisions

HHS received 31 comments about changes proposed to 45 CFR Chapter III. Below, we identify each part and subpart, summarize the comments received, and respond to comments accordingly. Additionally, this final rule makes technical edits throughout Chapter III to remove or replace references to those sections of the Child Support regulations that have been rescinded, as described below.

45 CFR Part 301 State Plan Approval and Grant Procedures

§ 301.0 Scope and Applicability of This Part

This section provides a brief overview of part 301 and how the part addresses the Federal administration of Title IV–D. This section does not impose any additional requirements or provide further clarification of the subsequent sections in this part. This section is not necessary for the implementation or enforcement of the child support program, and the removal of this section will not result in changes to the child support program's operation. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 301.0.

§ 301.10 State Plan

This section describes what a State plan is and asserts that the plan “contains all information necessary for the Office to determine whether the plan can be approved.” This section is not needed as the State plan is already discussed in Title IV–D and the Child Support regulations. Because this section is duplicative, removal will not result in changes to State plans or child support program operations. Therefore, this final rule removes and reserves § 301.10.

Comment: One commenter expressed concern that, although § 301.10 has been identified as duplicative, the section provides a concise definition of the term State plan that is not stated elsewhere in statute or regulation. The commenter believes that retaining this section would preserve a clear and

straightforward explanation of what a State plan entails.

Response: While the Department understands the desire to maintain a concise definitional statement, § 301.10 does not provide operational guidance or impose any requirement beyond what is already established in statute and in other regulatory provisions governing State plan content and submission. Its function is purely descriptive, and the regulatory framework is structured so that substantive State plan requirements appear in the operative sections of regulation, not in overview provisions. Removing § 301.10 does not eliminate any obligation for States, nor does it diminish clarity regarding State plan approval, because all necessary requirements are already set forth in Title IV–D and in applicable regulatory sections such as 45 CFR part 302. For these reasons, the Department maintains that removal of § 301.10 will not affect program operation or State plan expectations.

45 CFR Part 302 State Plan Requirements

§ 302.0 Scope of This Part

This section provides a brief overview of part 302 which describes the State plan provisions required for an approved plan under Title IV–D of the Act. This section imposes no additional requirements or further clarification of the subsequent sections in this part. Because this section is not necessary for the implementation or enforcement of the child support program its removal will not result in changes to the child support program's operation. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 302.0.

§ 302.1 Definitions

This section provides that the definitions found in § 301.1 also apply to part 302. This requirement is duplicative as the introductory paragraph of § 301.1 provides that the definitions in § 301.1 apply throughout this chapter, *i.e.*, parts 301–310, unless the context otherwise indicates. Because § 302.1 is duplicative, its removal will not result in changes to the child support program's operation. Therefore, this final rule removes and reserves § 302.1.

Comment: One commenter argued that § 302.1 should be retained because, in their view, it provides essential direction and clarity, helps preserve regulatory consistency, and minimizes confusion by reiterating how definitions apply within part 302.

Response: While the Department understands the commenter's interest in maintaining § 302.1 to reinforce clarity within part 302, this section does not provide any additional direction beyond what is already established in § 301.1. The general definitions in § 301.1 apply throughout all IV–D regulations unless the context otherwise indicates, including part 302. As a result, § 302.1 merely repeats an instruction already addressed elsewhere in regulation. Removing duplicative text supports a clearer and more streamlined regulatory structure by ensuring definitions are housed in a single authoritative location rather than restated across parts of 45 CFR Chapter III. Removing § 302.1 does not alter the applicability of definitions or affect any program obligations.

§ 302.11 State Financial Participation

This section restates the statutory requirement under section 454(2) of the Act, 42 U.S.C. 654(2), regarding State financial participation. The statute independently requires the State Plan to provide for financial participation by the State. Removing this duplicative regulation does not alter State plan requirements or child support program operations. For these reasons, this final rule removes and reserves § 302.11.

Comment: One commenter argued that § 302.11 should be retained because, although duplicative of statutory language, it efficiently consolidates guidance from multiple sections of the Act into a single location within the regulations. The commenter emphasized that having all related Federal financial participation requirements presented together enhances clarity, improves usability, and reduces the need for States to search across several statutory provisions to understand the financial participation obligations.

Response: While the Department recognizes the commenter's interest in having Federal financial participation requirements consolidated in one place, § 302.11 does not provide additional clarification or operational instruction beyond what is already required under sections 454(2) and 455 of the Act. Because § 302.11 merely restates a statutory requirement without adding interpretive value or establishing new obligations, its retention would duplicate rather than enhance existing law. Removing duplicative regulatory text strengthens the clarity of the regulatory framework.

§ 302.14 Fiscal Policies and Accountability

This section requires the State plan to provide that the IV–D agency will

maintain an accounting system and supporting fiscal records adequate to ensure that claims for Federal funds comply with applicable Federal requirements. This section also cross-references 2 CFR 200.344 through 200.338 to incorporate the records retention requirements of 2 CFR part 200. This section is not needed because § 301.15 and § 304.10 provide that as a condition for Federal financial participation, the requirements of 2 CFR part 200 (with the exception of 2 CFR 200.306 and 200.328) establishing uniform administrative requirements and cost principles apply to all grants made to States under this part. In turn, 2 CFR part 200 requires recipients of Federal awards to maintain accounting systems and comply with financial management requirements for Federal awards that include maintaining records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, and tracking expenditures to establish that funds have been disbursed and used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. *See* 2 CFR 200.302. Because § 302.14 is duplicative, its removal will not result in changes to the child support program's operation. For these reasons, this final rule removes and reserves § 302.14.

Comment: A commenter recommended retaining § 302.14, explaining that although the section may appear duplicative of general requirements in §§ 301.15 and 304.10, it provides important clarity by directing State administrators to the specific records management provisions in 2 CFR 200.334–200.338 rather than to the full body of OMB administrative requirements in 2 CFR part 200. The commenter stated that short, targeted regulations like § 302.14 distill complex statutory and regulatory requirements into single, easily identifiable provisions. They argued that these types of rules improve legal transparency, reduce ambiguity, strengthen accountability, and provide clear standards for compliance and audit defense. They also noted that sub-regulatory guidance does not carry the same legal weight as regulations and may not be upheld if a State appeals an adverse audit determination, making concise regulatory direction particularly valuable.

Response: The Department appreciates the commenter's desire to retain § 302.14 as a concise point of reference for fiscal accountability and records management requirements. However, § 302.14 does not create any

independent standards or obligations beyond those already contained in §§ 301.15 and 304.10, and 2 CFR part 200. These cross-referenced provisions comprehensively establish the uniform administrative requirements, financial management standards, and record retention obligations applicable to all Federal awards, including title IV–D grants. Because the statutory and regulatory framework already requires States to maintain accounting systems and supporting fiscal records sufficient to document compliance with Federal requirements, § 302.14 merely restates information that is fully addressed elsewhere in regulation.

The Department acknowledges concerns about legal weight and audit defensibility; however, removing duplicative language does not affect the enforceability of existing Federal requirements. State IV–D agencies remain bound by the fiscal management and record retention standards established in 2 CFR part 200 and the requirements in §§ 301.15 and 304.10. Maintaining a streamlined regulatory structure that avoids superfluous or repetitive provisions supports clearer organization of the CFR and reinforces the role of operative sections as the definitive source of regulatory obligations. Removing § 302.14 will not change fiscal accountability requirements or the operation of the child support program.

§ 302.15 Reports and Maintenance of Records

This section requires State plans to confirm that the IV–D agency “will maintain records necessary for the proper and efficient operation of the program” and “will make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports.” This section is not needed in regulation because it is duplicative of statutory and regulatory requirements and contains technical details that may be better suited to a different format. Accordingly, this final rule removes and reserves § 302.15. States must continue to comply with their statutory and regulatory obligations under Sections 454(10) and 455(d) of the Act, as well as §§ 301.11, 301.15, and 304.10. The removal of this section will not result in a change in the operation of the child support program.

This final rule also makes technical edits to § 302.33(e)(4) to remove and replace the reference to “§ 302.15” with “§ 301.11” and to § 301.16(a) to remove

and replace the reference to “§ 302.15” with “section 455(d) of the Act”. We acknowledge that § 305.63(a)(2) also includes a cross-reference to § 302.15, which ACF intends to revise in future rulemaking.

Comment: Two commenters encouraged OCSE to retain § 302.15. They stated that the regulation consolidates reporting and records maintenance requirements that are otherwise dispersed across several lengthy statutory provisions. One commenter emphasized that § 302.15 identifies specific program operation records such as applications and location activities, which they believe are not fully duplicated in 42 U.S.C. 654(10) or 655(d). Another commenter stated that § 302.15 provides a concise list that is easier for staff to locate than searching through extensive statutory language. Both commenters expressed concern that without regulatory text, OCSE may have less ability to enforce these expectations, since sub-regulatory guidance does not have the same legal weight or may not be upheld if a State challenges an audit finding. They suggested that this type of regulation reduces ambiguity, lowers legal risk, and offers clearer standards for meeting broad reporting obligations.

Response: The Department appreciates the commenters’ interest in maintaining § 302.15 as a single, accessible source for record maintenance and reporting expectations. However, § 302.15 does not establish requirements beyond those already contained in sections 454(10) and 455(d) of the Act or in the existing regulations at §§ 301.11, 301.15 and 304.10. The statutory and regulatory framework already requires States to maintain all records needed for proper program administration, for verification of reports and for demonstrating compliance during audits. These obligations, along with the financial management and documentation standards adopted through 2 CFR part 200, comprehensively govern the types of records States must retain. Removal of duplicative regulatory text improves the organization of the CFR while preserving the Department’s full ability to enforce statutory and regulatory requirements. States remain responsible for maintaining complete and accurate documentation as required under the Act and applicable regulations.

§ 302.17 Inclusion of State Statutes

This section requires State IV–D agencies to include in the State plan a copy of the State statutes and regulations that provide procedures to determine paternity and establish and

enforce child and spousal support obligations. We have determined § 302.17 is not necessary because § 301.11 already requires States to submit all information necessary for State plan approval in the format prescribed by the Office. Section 301.11 requires that the State plan must be submitted to the Office “in the format and containing the information prescribed by the Office, and within time limits set in implementing instructions issued by the Office.” Since submission of State statutes, regulations, and policies is necessary for the Office to determine whether a State plan can be approved under part 301, § 302.17 is duplicative and unnecessary and its removal will not result in changes to the requirements for State plan approval. Therefore, this final rule removes and reserves § 302.17.

Comment: A commenter stated that § 302.17 should be retained because, in their view, its requirements are not duplicated elsewhere in regulation or statute. They explained that § 301.11 requires States to provide information requested by OCSE but does not specify that States must submit their statutes and regulations as part of the State plan. The commenter argued that § 302.17 fills this gap by clearly requiring the submission of State statutes and regulations that govern paternity establishment and the establishment and enforcement of support obligations. They noted that without a regulatory requirement, States may not consistently provide this material, which would limit OCSE’s ability to conduct a comprehensive review of State compliance with Federal requirements.

Response: The Department appreciates the commenter’s interest in retaining § 302.17. However, the obligation to provide statutes, regulations and policies necessary for State plan approval is already established in § 301.11. That provision requires that the State plan be submitted in the format and containing the information prescribed by OCSE, and OCSE’s implementing instructions specify that States must provide the statutes, regulations and policies needed to determine whether a plan can be approved. Because § 302.17 simply restates what States are already required to provide under § 301.11, it does not create additional clarity or impose new requirements. Retaining duplicative regulatory text does not enhance OCSE’s ability to review State plans or enforce Federal requirements, and removal does not diminish OCSE’s authority to require submission of statutes and

regulations as part of the plan approval process.

§ 302.30 Publicizing the Availability of Support Enforcement Services

This section requires the State plan to provide that the State will publicize the availability of support enforcement services. This section is a near-verbatim regulatory restatement of section 454(23) of the Act, 42 U.S.C. 654(23), and does not add new requirements beyond the statute. Because restating this requirement found in statute is duplicative and not necessary, the removal of this section will not change the requirement from remaining in effect due to the statutory language. Accordingly, this final rule removes and reserves § 302.30.

Comment: A commenter encouraged OCSE to retain § 302.30. They explained that although the regulation closely tracks the statutory requirement in section 454(23) of the Act, it extracts and highlights information that is otherwise embedded within a lengthy statutory provision. The commenter stated that having this requirement in regulation makes it easier for State staff to research and reference and provides clearer visibility into the obligation to publicize the availability of support enforcement services. They expressed concern that removing the regulation may reduce accessibility of the requirement and make program research more difficult.

Response: The Department appreciates the commenter's interest in retaining § 302.30 to support ease of reference and research. However, § 302.30 does not create any additional obligations beyond those already established in section 454(23) of the Act. The statutory requirement to publicize the availability of child support services remains in effect regardless of the removal of this regulatory text. Because § 302.30 simply restates the statute without adding substantive clarification or operational detail, keeping it in regulation would result in duplication rather than improved transparency. Removal of duplicative sections helps maintain a streamlined and organized regulatory framework, while the underlying statutory requirement continues to govern State responsibilities.

§ 302.32 Collection and Disbursement of Support Payments by the IV–D Agency

Section 302.32 discusses the collection and disbursement of support payments by the IV–D agency as well as the requirement for the State plan to establish and operate a State

Disbursement Unit (SDU). Originally, we determined this section was not needed in regulation because the authorizing statute is prescriptive regarding the establishment of an SDU as well as the collection and disbursement of support payments. After reviewing the comments, the Department has determined that rescinding § 302.32 could inadvertently create uncertainty or suggest a shift in program expectations. For these reasons, this final rule maintains § 302.32.

Comment: During the comment period, we received significant and persuasive opposition to removing § 302.32. Commenters emphasized that the regulatory text provides clarity and operational stability that State administrators, courts, employers, and other stakeholders rely upon to ensure consistent and accurate implementation, particularly with regard to disbursement timeframes for different categories of child support payments, including intergovernmental IV–D collections, collections in public assistance cases, IV–E foster care disbursements, and Federal Tax Refund Offsets (FTROs). Several commenters also raised that States' automated systems are programmed to meet these distribution timeframes and relied upon for accurate reporting. Commenters stated that § 302.32 helps prevent misinterpretation of disbursement rules and SDU functions, and that rescinding it could increase the likelihood of errors, delays, and contested transactions.

Response: Commenters made clear that the regulatory provisions continue to play an important role in supporting uniform administration of SDU operations and disbursement procedures nationwide. Therefore, although the underlying statutory framework remains unchanged, we are persuaded by the comments that § 302.32 promotes clarity, consistency, and confidence in program requirements.

§ 302.33 Services to Individuals Not Receiving Title IV–A Assistance

This section addresses services available to individuals who are not receiving Title IV–A assistance and includes regulatory provisions related to application fees, recovery of costs, and annual fees. Because the authorizing statute already specifies these requirements, we initially determined that § 302.33 was duplicative and could be removed without changing State obligations or program operations. However, based on the comments received, the Department has determined that retaining § 302.33 is necessary to support program stability

and prevent misinterpretation. Therefore, this final rule maintains § 302.33.

Comment: States, advocacy organizations, and other stakeholders expressed strong opposition to removing § 302.33. Commenters emphasized that although the statutory language governs application fee rules, cost recovery options, and annual fee provisions, the regulatory text provides essential clarity and supports consistent application of these requirements across IV–D programs. They stated that § 302.33 helps ensure uniform administration and interpretation, facilitates program outreach, and reduces the potential for misapplication or confusion by consolidating these provisions in one regulatory location. Several commenters also expressed concern that rescinding § 302.33 would eliminate the authority to provide limited services in specific types of cases.

Response: After reviewing substantial and consistent opposition to the proposed removal of § 302.33, the Department determined that retaining § 302.33 is necessary to support program stability and prevent misinterpretation. While the underlying statutory requirements remain unchanged, retaining § 302.33 in regulation ensures clear, accessible guidance for States and stakeholders and supports nationwide consistency in the administration of services to non-TANF applicants.

§ 302.34 Cooperative Arrangements

This section states that the State plan must provide that the State will enter into cooperative arrangements under § 303.107 with the appropriate courts, law enforcement officials, such as district attorneys, attorneys general, and similar public attorneys and prosecutors, corrections officials, and Indian Tribes or Tribal organizations. This section is not needed in regulation as section 454(7) and (33) of the Act, 42 U.S.C. 654(7) and (33), is already prescriptive as to requiring that State plans include entering into cooperative arrangements. As such, this section is duplicative and unnecessary, and removal of this section will not result in a change in the operation of the child support program. Therefore, this final rule removes and reserves § 302.34. This final rule also makes technical edits to §§ 302.12(a)(3), 303.21(b), and 304.20(b)(1)(iii)(C) to remove the reference to § 302.34 and replace it with “section 454(7) and (33) of the Act.” Additionally, this final rule makes technical edits to § 304.21(a) to remove the reference to § 302.34 and replace it with “section 454(7) and (33) of the Act.”

Comment: Two commenters argued that § 302.34 should be retained because it provides clearer and more comprehensive direction than the underlying statute. They explained that 42 U.S.C. 654(7) does not specifically list district attorneys, attorneys general, similar public attorneys and prosecutors, or corrections officials as entities with which cooperative arrangements may be made. The commenters stated that § 302.34 identifies these entities explicitly and therefore offers more complete and accessible guidance for State IV–D programs. They also noted that § 304.21, which defines “law enforcement officials” to include these entities, cites § 302.34 and will need updates if § 302.34 is removed. In addition, commenters stated that § 302.34 extracts information from a lengthy section of the statute and presents it in a concise regulatory format that is much easier for research and reference.

Response: The Department appreciates the commenters’ interest in retaining § 302.34 to support clarity and ease of reference. However, the statutory provisions at 42 U.S.C. 654(7) and 654(33) already require States to enter into cooperative arrangements with courts and law enforcement officials as necessary to carry out the child support program. These statutory requirements are enforceable regardless of whether § 302.34 remains in regulation. Although § 302.34 includes examples that are not individually listed in the statute, The Department views the statutory language as broad and encompassing the types of entities identified in the regulation.

§ 302.36 Provision of Services in Intergovernmental IV–D Cases

This section provides that States must include in their State plan that they will cooperate with other State and Tribal IV–D agencies, as well as foreign reciprocating countries under section 459A of the Act, 42 U.S.C. 659a, and any foreign country (or political subdivision thereof) with which a State has entered into a reciprocal arrangement for the establishment and enforcement of support obligations consistent with section 459A(d) of the Act. This section reflects Title IV–D State plan requirements of sections 454(9), (20)(A), (32)(A) and 466(f) of the Act, which respectively require interstate cooperation, cooperation with foreign reciprocating countries and through the Uniform Interstate Family Support Act of 2008 (UIFSA), and cooperation with Tribal IV–D agencies. This section also reflects the requirements of the Full Faith and

Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. 1738B, that requires States to recognize each other’s support orders. This section is not needed in regulation as the above-referenced statutes collectively establish the requirement that States must provide the full range of services in intergovernmental cases. In addition, § 303.7 establishes specific requirements regarding intergovernmental cooperation in child support enforcement services for States and § 309.120 provides that Tribal IV–D agencies must cooperate with and extend the full range of services under their IV–D plans to States and other Tribal IV–D agencies. As such, this section is duplicative and unnecessary, and removal of this section will not result in a change in the operation of the child support program. Accordingly, this final rule removes and reserves § 302.36.

Comment: A commenter recommended retaining § 302.36 because they believe it serves a different function than the provisions cited as duplicative. They explained that although § 303.7 provides detailed requirements for how States must process intergovernmental cases, § 302.36 plays a distinct role by requiring States to include an attestation in their State plan committing to provide the full range of intergovernmental IV–D services. The commenter noted that § 302.36 consolidates requirements drawn from multiple statutory provisions related to interstate cooperation, cooperation with Tribal IV–D agencies, and cooperation with foreign reciprocating countries. They argued that removing the regulation would make research more difficult because the statutory requirements are spread across several sections of the Act, while § 302.36 gathers them into one clear and concise regulatory provision. They also expressed concern that, without § 302.36, OCSE may not have a specific regulatory basis to require States to affirm this commitment within the State plan.

Response: The Department appreciates the commenter’s interest in retaining § 302.36 to support clarity and ease of reference. However, the statutory provisions governing intergovernmental cooperation, including sections 454(9), 454(20)(A), 454(32)(A), and 466(f) of the Act, already establish that States must provide the full range of child support services in intergovernmental cases and must cooperate with other States, Tribes, and foreign jurisdictions. These statutory requirements are comprehensive and binding, and they

do not rely on § 302.36 to be effective. In addition, § 303.7 provides detailed operational requirements for processing all types of intergovernmental IV–D cases. Tribal IV–D cooperation requirements are also addressed in § 309.120. Because § 302.36 restates what the statutes already mandate and does not add new obligations or clarify operational procedures beyond what is already established in regulation, its continued inclusion would result in duplication rather than increased clarity. Removal of § 302.36 does not limit OCSE’s authority to require States to comply with intergovernmental cooperation obligations, nor does it change the services States must provide in intergovernmental IV–D cases.

§ 302.38 Payments to the Family

This section describes the requirement that State plans include payments being made to specific individuals. Originally, we determined this section was not needed in regulation because section 454(11)(B) of the Act (42 U.S.C. 645(11)(B)) is prescriptive as to requiring that State plans must “provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children.” However, based on the comments received, the Department is persuaded that it is necessary to retain § 302.38 to prevent misinterpretation.

Comment: Commenters emphasized that § 302.38 provides important regulatory clarity regarding the individuals who must receive payments made under sections 456 and 457 of the Act. They explained that although the statute identifies several categories of eligible recipients, the regulatory text captures additional scenarios that occur in practice, including payments to judicially appointed conservators and alternate caretakers designated by the custodial parent. Commenters noted that retaining § 302.38 reinforces consistent application of payment rules nationwide, particularly in cases involving multiple caretakers, temporary guardianship arrangements, or other complex family structures. They also raised concerns that eliminating § 302.38 could lead States to inconsistent interpretations or create uncertainty regarding payment eligibility, including the prohibition on disbursing IV–D payments to private collection firms.

Response: After careful review of the comments received, the Department determined that retaining § 302.38 best supports program stability and ensures

uniform application of statutory and regulatory requirements. Commenters made clear that the regulatory text helps prevent misinterpretation by identifying additional eligible caretakers and clearly establishing that payments must be issued directly to families rather than private collection firms. Removing the section could inadvertently create confusion or gaps in practice, especially in cases involving nonrelative caretakers or judicially appointed conservators.

45 CFR Part 303 Standards for Program Operations

§ 303.0 Scope and Applicability of This Part

This section is a brief overview of part 303 which describes the minimum organizational and staffing requirements and the standards for program operation the State IV–D agency must meet in carrying out the IV–D program. This section does not impose any additional requirements or provide any further clarification of the subsequent regulations in part 303. Because this section is duplicative and not otherwise necessary for the implementation or enforcement of the child support program, removal will not affect program operation. There were no comments specifically on this section. Therefore, this final rule removes and reserves § 303.0.

§ 303.1 Definitions

This section states that the definitions found in § 301.1 also apply to part 303. Because § 301.1 already provides general definitions applicable throughout all IV–D regulations unless the context otherwise indicates, § 303.1 is duplicative. Therefore, this final rule removes and reserves § 303.1.

Comment: One commenter recommended retaining § 303.1. They stated that the section provides essential direction and clarity by reiterating which definitions apply within part 303. The commenter explained that keeping the definition cross-reference helps preserve regulatory consistency and minimizes confusion, particularly for readers who rely on part 303 as a distinct regulatory section. They indicated that without § 303.1, users may be uncertain about which definitions govern the provisions in this part.

Response: The Department appreciates the commenter's interest in retaining § 303.1 to support clarity and consistency. However, § 301.1 already establishes that the general definitions apply throughout all IV–D regulations unless the context otherwise indicates, which includes part 303. Because

§ 303.1 simply repeats this instruction and does not add additional guidance, retaining it would duplicate rather than enhance the regulatory framework. Removal of duplicative text ensures that definitions remain centralized in one place and reduces unnecessary repetition in the CFR.

§ 303.32 National Medical Support Notice

This section describes the National Medical Support Notice (NMSN) requiring States to have laws to enforce the provision of health care coverage for children of noncustodial parents and, at the State option, custodial parents who are required to provide health coverage. The Department has determined that this section is unnecessary because the authorizing statute, section 466(a)(19) of the Act (42 U.S.C. 666(a)(19)) is prescriptive, and in conjunction with the NMSN form and instructions, provides the necessary operational details for consistent implementation of the law. As such, the removal of this regulation will not result in a change in the operation of the child support program. Accordingly, this final rule removes and reserves § 303.32. This final rule also makes technical edits to §§ 303.7(d)(6)(iv), 304.20(b)(11), 308.2(e)(2), and 308.2(e)(3) to remove the reference to § 303.32 and replace it with “section 466(a)(19) of the Act.”

Comment: Multiple commenters urged OCSE to retain § 303.32, stating that the regulation provides practical operational procedures that are not stated in the statute. They highlighted three provisions in particular: the process for contesting withholding based on a mistake of fact, employer notification when a current medical support order is no longer in effect, and plan selection when more than one option is available. Commenters cautioned that removing these procedures could lead to inconsistent practices among States, employers, and plan administrators, and could delay or disrupt children's health coverage. They also noted that while federal law requires use of the NMSN, the regulatory text helps ensure uniform implementation by clarifying roles and responsibilities, and that relocating or retaining these procedures would better support day-to-day compliance.

Response: The Department appreciates the commenters' focus on maintaining clear, nationally consistent NMSN practices, but we disagree retaining section 303.32 is necessary to achieve these goals. Section 303.32 restates the statutory requirement at 42 U.S.C. 666(a)(19) that States use the NMSN to enforce medical support. Our

decision to remove and reserve § 303.32 will not alter the legal requirement to use the NMSN or the responsibilities of States, employers, and plan administrators.

The Department agrees that certain operational details are necessary for consistent implementation. As part of the Paperwork Reduction Act (PRA) three-year review, the PRA-approved NMSN forms and instructions, which establish uniform, nationally applicable procedures for employers and agencies, are reviewed, maintained, and updated. These materials go through the public comment process and are refined to improve operational clarity, including guidance on contesting withholding, issuing termination notifications, and selecting plans when multiple options are available. OCSE oversees the NMSN materials under OMB control numbers and regularly incorporates stakeholder feedback gathered during PRA review cycles and related correspondence.

To ensure continuity, the Department will continue to use the PRA process and sub-regulatory guidance to preserve key NMSN procedures. The Department will evaluate whether to add explicit cross-references within existing guidance so that users can readily find operational steps that commenters identified as important for day-to-day compliance. Removal of § 303.32 does not change the obligation to follow the NMSN forms and instructions, and OCSE will maintain those materials to support consistent national practice.

45 CFR Part 304 Federal Financial Participation

§ 304.12 Incentive Payments

This section describes the computation process for determining incentive payments for States prior to the Child Support Performance and Incentive Act of 1998 (CSPIA). CSPIA created a new performance-based incentive funding system for State IV–D programs, codified at section 458 of the Act, 42 U.S.C. 658. With the implementation of 45 CFR part 305, which phased in and then fully replaced the prior incentive system, § 304.12 became obsolete on October 1, 2001. *See* 65 FR 82178. Section 201(b) of CSPIA established a three-year transition period during which both the former and new systems were used to determine State incentive amounts. Beginning in fiscal year 2002, the formula set forth under part 305 was fully implemented and has governed all incentive calculations since that time. These processes have long been superseded and the regulatory text in § 304.12 no longer reflects current law

or practice, therefore this final rule removes and reserves § 304.12. This final rule also makes technical edits to § 302.55 to remove to remove and replace the reference to “§ 304.12” with “section 458 of the Act.”

Comment: One commenter supported removing regulations that are genuinely obsolete and have no continuing operational value, and as such did not oppose removal of regulatory text that exclusively concerns the pre-2002 formula. However, the commenter emphasized that incentive payments continue to be an essential source of State and local program funding and urged OCSE to clearly state in the final rule that rescinding § 304.12 has no effect on the current incentive system, State eligibility criteria, allowable reinvestment of incentive funds, or the requirements in part 305 and section 458 of the Act. The commenter also suggested including a brief crosswalk or pointer to the current authorities governing incentive calculation, payment, reinvestment, and reporting to ensure that removing obsolete text does not create confusion about the continuing availability or treatment of incentive funds.

Response: The Department appreciates the commenter’s request for reassurance about the continued operation of the current incentive system. Section 304.12 describes the incentive formula and transitional computation procedures that ceased to apply after fiscal year 2001. The current incentive system is governed by section 458 of the Act and the regulations in Part 305, which remain in effect and unchanged by this action. Removing § 304.12 does not affect State eligibility for incentive payments, the calculation or payment of incentives, or the requirements governing reinvestment and reporting of incentive funds. All operational rules and authorities for incentives continue to reside in existing law and regulation. Therefore, this final rule removes and reserves § 304.12.

§ 304.20 Availability and Rate of Federal Financial Participation

This section describes a list of eligible instances of Federal financial participation (FFP). The list is not exhaustive, but rather a partial set of examples illustrating types of activities that may qualify for FFP. If requested, the Department may establish more robust sub-regulatory guidance to provide further information on the availability of FFP for other child support expenditures. As such, this section was initially proposed for removal because it does not establish new requirements and is not necessary

to ensure compliance with Title IV–D funding rules.

Comment: Commenters consistently expressed concern that removing § 304.20 could create confusion for States and stakeholders. They explained that, even though the list in § 304.20 is partial, it serves as an important regulatory reference point that anchors fiscal reporting, supports transparency, and helps administrators locate key funding rules without having to rely exclusively on sub-regulatory materials. Commenters cautioned that rescinding the section might complicate understanding of allowable FFP claims and reduce clarity needed for accurate fiscal management.

Response: After reviewing substantial opposition to the proposed removal, the Department agrees that retaining § 304.20 best supports consistent program administration. Although the list is not exhaustive, its presence in regulation provides a clear and familiar reference that helps prevent misinterpretation of the types of expenditures that may be eligible for FFP. Maintaining § 304.20 ensures continuity for States and stakeholders and avoids unnecessary confusion or disruption in fiscal reporting practices. Retaining the section does not alter program operations or funding rules; it simply preserves a regulatory anchor that complements existing statutory and sub-regulatory guidance. Therefore, this final rule maintains § 304.20.

45 CFR Part 305 Program Performance Measures, Standards, Financial Incentives, and Penalties

§ 305.0 Scope

This section provides a brief overview of part 305 and the statutory basis for the incentive system requirements, penalty provisions, and Federal audit requirements as described by the Act. This section does not impose any additional requirements or provide any further clarification of the subsequent regulations in part 305, and is not necessary for the implementation or enforcement of the child support program. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 305.0.

§ 305.42 Penalty Phase-In

This section describes the penalty phase-in period for States based on data reported for fiscal year 2001. CSPIA established a new penalty system under section 458 of the Act (formerly Section 458A) beginning in fiscal year 2001. To implement the new penalty system, this regulation established the base year for

data (fiscal year 2000 data) from which to determine improvements in performance during FY 2001. The phase-in period described has long expired, and the section is obsolete. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 305.42.

§ 305.62 Disregard a Failure Which Is of a Technical Nature

This section describes that if a State is subject to a penalty under § 305.61(a)(1)(ii) or (iii) as a result of a failure of a technical nature which does not adversely affect the performance of the State IV–D program, the State may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more of the IV–D requirements. This section is not needed in regulation as it is a restatement of 42 U.S.C. 609(a)(8)(C).

Comment: One commenter recommended retaining § 305.62. They stated that although the section repeats statutory language, it serves an important complementary function by presenting the statutory provision alongside the surrounding regulatory framework in part 305. The commenter explained that requiring States to consult the statute rather than a regulation creates unnecessary administrative burden and reduces efficiency. They suggested that § 305.62 helps readers quickly locate all related penalty provisions in one place, improves usability, and supports clearer understanding of when technical failures may be disregarded for penalty purposes.

Response: The Department appreciates the commenter’s interest in maintaining § 305.62 for ease of reference. However, § 305.62 does not provide any additional requirements or clarification beyond what is already stated in 42 U.S.C. 609(a)(8)(C). Retaining § 305.62 would result in duplication without providing added interpretive value or operational guidance, while removing duplicative text supports a more streamlined and organized regulatory structure. States and OCSE remain able to rely on the statutory provision. Accordingly, this final rule removes and reserves § 305.62.

45 CFR Part 307 Computerized Support Enforcement Systems

§ 307.0 Scope of This Part

This section describes the sections of the Act implemented by Part 307. This section is not necessary to understand the Act or the regulations that implement it, nor does it impose any

additional requirements. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 307.0.

45 CFR Part 308 Annual State Self-Assessment Review and Report

§ 308.0 Scope

This section explains that part 308 establishes standards and criteria for the State self-assessment review and report process as required by section 454(15)(A) of the Act. This section is not needed as the statutory authority for part 308 is clearly stated as section 454(15)(A) of the Act. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 308.0.

§ 308.3 Optional Program Areas of Review

This section provides optional reporting items that can be included in a State's Annual State Self-Assessment Review and Report. These items are not required by statute and not otherwise needed to measure State compliance with Federal requirements. When this section was promulgated in December 2000, drafters stated that the goal was for States to describe in these optional areas the successes or failures that States were seeing in the operation of their program. The final rule explains that a commenter thought this section should be deleted from the regulation as it addresses optional areas of review and has no statutory basis, and HHS responded that the Secretary has the authority to regulate beyond the statute so long as it is necessary for the efficient administration of the program. *See* 65 FR 77742.

Upon further evaluation, this section is not essential for the efficient administration of the program as States can provide optional information to other States and the Department with or without this section. As such, it is not necessary that these optional program areas of review be included in the child support program regulations. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 308.3.

45 CFR Part 309 Tribal Child Support Enforcement (IV-D) Programs

§ 309.01 What does this part cover?

This section provides a summary of what the remainder of the part covers as well as the statutory provision that it implements. This section is not needed in regulation as it is merely summarizing the subsequent sections, and that they are required as a result of the statute. The removal of this section

from regulation will not result in a change to the child support program's operation. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 309.01.

§ 309.55 What does this subpart cover?

This section provides a brief summary of what the remainder of the subpart covers. This section is not needed in regulation as it is merely summarizing the subsequent sections and does not impose any additional requirements or provide any further clarification of the subsequent sections. The removal of this section will not result in a change to the child support program's operation. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 309.55.

§ 309.165 What recourse does a tribe or tribal organization have to dispute a determination to disallow Tribal IV-D program expenditures?

This section states that Tribes will follow the grant appeals procedures outlined in 45 CFR part 16 in the event of a dispute arising from a decision to disallow Tribal IV-D program expenditures. This section is not necessary because 45 CFR part 16, Appendix A specifies that the Departmental Grant Appeals Board reviews disallowances under Title IV of the Social Security Act. Thus, the removal of this section will not change Tribes' ability to appeal a decision to disallow a Tribal IV-D program expenditure or the procedures to do so. The removal of this section will not result in the change of any operation of the tribal child support program. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 309.165.

45 CFR Part 310 Computerized Tribal IV-D Systems and Office Automation

§ 310.0 What does this part cover?

This section serves as a table of contents for the information contained in Part 310. Because this section merely summarizes the subsequent sections, the removal of this section will not result in a change to the child support program's operation. We received no comments specifically on this section. Therefore, this final rule removes and reserves § 310.0.

V. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*, as amended) (PRA), all Departments are required to submit to the Office of Management and

Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This final rule does not contain any information collection requirements requiring OMB approval under the PRA and, therefore, will not create any new paperwork burdens or modify existing burdens subject to OMB review.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule does not have substantial direct impact on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not pre-empt State law. This rule removes unnecessary and obsolete regulations from the Child Support Enforcement rules. Therefore, in accordance with Section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS believes it is not necessary to prepare a family policymaking assessment because the actions in this rule will not have any impact on the autonomy or integrity of the family as an institution.

VI. Regulatory Impact Analysis

We have examined the impacts of this rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs

of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 14192 requires that any new incremental costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.” The Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is a significant action under Executive Order 12866 Section 3(f).

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact on small entities. Because this is simply repealing obsolete and unnecessary language, we certify this final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis; identify and consider a reasonable number of regulatory alternatives; and select the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation) in at least one year by State, local, and tribal governments, in the aggregate, or by the private sector. Each agency issuing a rule with relevant effects over that threshold must also seek input from State, local, and tribal governments. The current threshold after adjustment for inflation is \$193 million, using the most current (2025) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

VII. Tribal Consultation Statement

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires agencies to consult with Indian Tribes when regulations have “substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.” Similarly, ACF’s Tribal Consultation Policy says that consultation is triggered for any legislative proposal, new rule adoption, or other policy change that significantly affects Tribes, meaning there exists a reasonable presumption that it has or may have substantial direct effects on one or more Indian Tribes, on

the relationship between the Federal Government and Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. ACF is nevertheless committed to consulting with Indian Tribes and Tribal leadership on this action to the extent practicable and permitted by law.

List of Subjects

45 CFR Part 301

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 302

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Accounting, Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Statistics.

45 CFR Part 307

Child support, Computer technology, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 308

Accounting, Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

45 CFR Part 309

Child support, Grant programs—social programs, Indians—tribal government, Reporting and recordkeeping requirements.

45 CFR Part 310

Child support, Grant programs—social programs, Indians.

For the reasons discussed in the preamble, the Department of Health and Human Services amends 45 CFR chapter III as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

- 1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1301, and 1302.

§ 301.0 [Removed and Reserved]

- 2. Remove and reserve § 301.0.

§ 301.10 [Removed and Reserved]

- 3. Remove and reserve § 301.10.

§ 301.16 [Amended]

- 4. In paragraph (a), remove the text “§§ 301.15 and 302.15 of this chapter, respectively” and replace it with the text “section 455(d) of the Act, and § 301.15 of this chapter”.

PART 302—STATE PLAN REQUIREMENTS

- 5. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 302.0 [Removed and Reserved]

- 6. Remove and reserve § 302.0.

§ 302.1 [Removed and Reserved]

- 7. Remove and reserve § 302.1.

§ 302.11 [Removed and Reserved]

- 8. Remove and reserve § 302.11.

§ 302.12 [Amended]

- 9. In paragraph (a)(3), remove the text “§ 302.34” and replace it with the text “section 454(7) and (33) of the Act”.

§ 302.14 [Removed and Reserved]

- 10. Remove and reserve § 302.14.

§ 302.15 [Removed and Reserved]

- 11. Remove and reserve § 302.15.

§ 302.17 [Removed and Reserved]

- 12. Remove and reserve § 302.17.

§ 302.30 [Removed and Reserved]

- 13. Remove and reserve § 302.30.

§ 302.33 [Amended]

- 14. In paragraph (e)(4), remove the text “§ 302.15 of this part” and replace it with the text “§ 301.11 of this part”.

§ 302.34 [Removed and Reserved]

- 15. Remove and reserve § 302.34.

§ 302.36 [Removed and Reserved]

- 16. Remove and reserve § 302.36.

§ 302.55 [Amended]

■ 17. Remove the text “§ 304.12” and replace it with the text “section 458 of the Act”.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 18. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k), and 25 U.S.C. 1603(12) and 1621e.

§ 303.0 [Removed and Reserved]

■ 19. Remove and reserve § 303.0.

§ 303.1 [Removed and Reserved]

■ 20. Remove and reserve § 303.1.

§ 303.7 [Amended]

■ 21. In paragraph (d)(6)(iv), remove the text “§§ 303.6, 303.31, 303.32” and replace it with the text “section 466(a)(19) of the Act and §§ 303.6, 303.31”.

§ 303.21 [Amended]

■ 22. In paragraph (b), remove the text “§ 302.34 of this part” and replace it with the text “section 454(7) and (33) of the Act”.

§ 303.32 [Removed and Reserved]

■ 23. Remove and reserve § 303.32.

PART 304—FEDERAL FINANCIAL PARTICIPATION

■ 24. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 304.12 [Removed and Reserved]

■ 25. Remove and reserve § 304.12.

§ 304.20 [Amended]

■ 26. Amend § 304.20 by:

■ a. In paragraph (b)(1)(iii)(C), removing the text “§ 302.34 of this chapter” and replacing it with the text “section 454(7) and (33) of the Act”; and

■ b. In paragraph (b)(11), removing the text “§§ 303.30, 303.31, and 303.32” and replacing it with “section 466(a)(19) of the Act and §§ 303.30 and 303.31”.

§ 304.21 [Amended]

■ 27. In paragraph (a), remove the text “§ 302.34 of this chapter” and replace it with the text “section 454(7) of the Act”.

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

■ 28. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

§ 305.0 [Removed and Reserved]

■ 29. Remove and reserve § 305.0.

§ 305.42 [Removed and Reserved]

■ 30. Remove and reserve § 305.42.

§ 305.62 [Removed and Reserved]

■ 31. Remove and reserve § 305.62.

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

■ 33. The authority citation for part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

§ 307.0 [Removed and Reserved]

■ 34. Remove and reserve § 307.0.

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

■ 35. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 654(15)(A) and 1302.

§ 308.0 [Removed and Reserved]

■ 36. Remove and reserve § 308.0.

§ 308.2 [Amended]

■ 37. Amend § 308.2 by:

■ a. In paragraph (e)(2), removing the text “§ 303.32 of this chapter” and replacing it with the text “section 466(a)(19) of the Act”; and

■ b. In paragraph (e)(3), removing the text “§ 303.32 of this chapter” and replacing it with the text “section 466(a)(19) of the Act”.

§ 308.3 [Removed and Reserved]

■ 38. Remove and reserve § 308.3.

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

■ 39. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

§ 309.01 [Removed and Reserved]

■ 40. Remove and reserve § 309.01.

§ 309.55 [Removed and Reserved]

■ 41. Remove and reserve § 309.55.

§ 309.165 [Removed and Reserved]

■ 42. Remove and reserve § 309.165.

PART 310—COMPUTERIZED TRIBAL IV-D SYSTEMS AND OFFICE AUTOMATION

■ 43. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

§ 310.0 [Removed and Reserved]

■ 44. Remove and reserve § 310.0.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–22116 Filed 10–28–26; 8:45 am]

BILLING CODE 4184–41–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 27**

[GN Docket Nos. 18–122 and 25–59; FCC 26–46; FR ID 374445]

Upper C-Band (3.98–4.2 GHz); Expanding Flexible Use of the 3.7 to 4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (FCC or Commission) announces that the Office of Management and Budget (OMB) has approved the information collection requirements under OMB Control Number 3060–1272, as adopted in the Commission’s Report and Order, Order of Proposed Modification, and Order on Reconsideration, FCC 26–46.

DATES: This rule is effective October 29, 2026.

FOR FURTHER INFORMATION CONTACT: Andrew McArdell of the Wireless Telecommunications Bureau, at Andrew.McArdell@fcc.gov or 202–418–1576.

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in 47 CFR 27.1412(e) on September 21, 2026. The Commission publishes this document as an announcement of the effective date for the amended rule. This document sets the addition of paragraph (e) to § 27.1412, which was included in amendatory instruction 26 of the final rule published at 91 FR 48700 (July 31, 2026), out as a separate instruction so the amendment can be incorporated into the CFR. When the FCC publishes a document announcing OMB approval of the information collection requirements

in 47 CFR 27.1412(b), (c), and (g), it will include a correction to amendatory instruction 26 to remove the addition of paragraph (e).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received final OMB approval on September 21, 2026, for the information collection requirements contained in 47 CFR 27.1412(e). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for this information collection is 3060–1272. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1272.

Title: 3.7 GHz Band Space Station Operator Transition Plans; 3.7 GHz Band Incumbent Earth Station Lump Sum Payment Elections.

OMB Approval Date: September 21, 2026.

OMB Expiration Date: March 31, 2027.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Estimated Number of Respondents and Responses: 3,003 respondents and 3,003 responses.

Estimated Hours per Response: 2,720 hours per eligible space station transition plan; 32 hours per incumbent earth station lump sum payment election.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), and 309.

Total Annual Burden: 104,160 hours.

Total Annual Cost: \$540,000.

Needs and Uses: On July 22, 2026, in furtherance of the goal of releasing more mid-band spectrum into the market to support and enable next-generation wireless networks, the Federal

Communications Commission (Commission) adopted a Report and Order, FCC 26–46, 91 FR 48700 (*Upper C-band R&O*), in which it reformed the use of the 4.0–4.2 GHz portion of the C-Band. The 4.0–4.2 GHz band currently is allocated in the United States exclusively for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service.

Domestically, space station operators use the 4.0–4.2 GHz band to provide downlink signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. The *Upper C-band R&O* calls for the relocation of existing FSS operations in the C-band, making 160 megahertz (3.98–4.14 GHz) available for flexible-use terrestrial wireless service throughout the contiguous United States through a Commission-administered public auction of licenses that must be completed by July 4, 2027, pursuant to a statutory mandate in the One Big Beautiful Bill Act, Public Law 119–21, section 40002(b)(2).

The Commission adopted a robust transition schedule to achieve an expeditious clearing and relocation of FSS operations and ensure that a significant amount of spectrum is made available quickly for next-generation wireless deployments, while also ensuring effective accommodation of relocated incumbent users. Pursuant to the *Upper C-band R&O*, all incumbent FSS operations in the contiguous United States must clear the 4.0–4.16 GHz portion of the C-band by December 30, 2030, or June 30, 2031, to ensure a timely transition process. The December 30 deadline applies to the top 75 Partial Economic Areas (PEAs) and aligns with the Federal Aviation Administration's first deadline to retrofit aircraft radio altimeters. The June 30 deadline applies to all other areas.

The Commission concluded in the *Upper C-band R&O* that, before the public auction of new licenses commences, it is appropriate for potential bidders to: (1) know when they will get access to the spectrum in the 3.98–4.14 GHz portion of the C-band that is currently occupied by incumbent FSS space station operators and earth stations; and (2) have an estimate of how much they may be required to pay for incumbent relocation costs and incentive payments should they become Upper C-band wireless licensees. New Upper C-band wireless licensees are required to pay for the reasonable and necessary relocation costs of incumbent space station and incumbent earth station operators that are required to

clear the 4.0–4.16 GHz portion of the C-band.

To facilitate the provision of this information to potential auction bidders, the Commission is seeking approval for a modified information collection to permit it to collect the following information from incumbents as adopted in the *Upper C-band R&O*:

Transition Plans

The *Upper C-band R&O* requires each eligible space station operator to submit to the Commission by November 5, 2026, and make available for public review, a detailed transition plan describing the necessary steps and estimated costs for the eligible space station operator to clear its existing operations in the 4.0–4.16 GHz portion of the C-band in the contiguous United States and its individual timeline for doing so. An eligible space station operator may make changes to its transition plan to update certain information or cure any defects that may be identified by the Commission or by relevant stakeholders during a public comment window.

This information collection will serve as the starting point for planning and managing the process of efficiently and expeditiously clearing the 4.0–4.16 GHz portion of the C-band, so that this spectrum can be auctioned for flexible-use service licenses.

List of Subjects in 47 CFR Part 27

Communications common carriers, Communications requirements, Radio, Reporting and recordkeeping requirements, Telecommunications.

For the reasons discussed in the preamble, the Commission amends 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

■ 2. Amend § 27.1412 by adding paragraph (e) to read as follows:

§ 27.1412 Transition plan.

* * * * *

(e) *Transition Plan.* Eligible space station operators must publicly file with the Commission no later than November 5, 2026, a Transition Plan that describes the actions that must be taken to clear 4000–4160 MHz and to migrate associated earth stations. Eligible space station operators shall have an opportunity to make any necessary

updates or resolve any deficiencies in their individual Transition Plans.

(1) The Transition Plan must detail the eligible space station operator's individual timeline and necessary actions for clearing 4000–4160 MHz, including:

(i) All existing space stations with operations that will need to be repacked;

(ii) The number of new satellites, if any, that the space station operator will need to launch to maintain sufficient capacity post-transition, including detailed descriptions of why such new satellites are necessary;

(iii) The specific grooming plan for migrating existing services into new spectrum, including the pre- and post-

transition frequencies that each customer will occupy;

(iv) Any necessary technology upgrades or other solutions that the space station operator intends to implement;

(v) The number and location of incumbent earth station antennas currently receiving the eligible space station operator's transmissions that will need to be transitioned;

(vi) An estimate of the number of incumbent earth station antennas that will require retuning, repointing, or other modifications to receive content on new transponder frequencies post-transition; and

(vii) The specific timeline by which the space station operator will

implement the actions described in its plan.

(2) To the extent that incumbent earth stations are not accounted for in eligible space station operators' Transition Plans, the Relocation Coordinator may assign responsibility for their transition to an eligible space station operator or ensure that migration steps and timelines are outlined in an individualized Earth Station Transition Plan as needed.

* * * * *

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–22037 Filed 10–28–26; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2026-13869; Airspace Docket No. 26-ASO-18]

RIN 2120-AA66

Establishment of Class D Airspace; Winter Haven, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace extending upward from the surface up to and including 2,500 feet within a 4.4-mile radius of Winter Haven Regional Airport, in Winter Haven, FL, excluding that portion within the Bartow Executive Airport Class D airspace area, as a new air traffic control tower will service the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Comments must be received on or before December 14, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2026-13869 and Airspace Docket No. 26-ASO-18 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58-213, West Building, 5th Floor, Washington, DC 20590-0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58-213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W58-213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11M Airspace Designations and Reporting Points and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT:

Rachel Cruz, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305-5571.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested people to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include

supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal considering the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edits, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Incorporation by Reference

Class D airspace designations are published in Paragraph 5000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the

current version of that order, FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to establish Class D from the surface to and including 2,500 feet MSL and within a 4.4-mile radius of Winter Haven Regional Airport in Winter Haven, FL, excluding that portion within the Bartow Executive Airport Class D airspace area. The FAA is proposing this action because a new air traffic control tower will service the airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Order 2100.6B, “Rulemaking and Guidance Procedure” (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these proposed amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, “FAA National Environmental Policy Act Implementing Procedures,” prior to any final regulatory action by the FAA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

- 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Winter Haven, FL [New]

Winter Haven Regional Airport, FL
(Lat. 28°03'47" N, long. 81°45'12" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.4-mile radius of Winter Haven Regional Airport; excluding that portion within the Bartow Executive Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in College Park, Georgia, on October 23, 2026.

Andree C. Davis,

Manager, Airspace and Procedures South Team, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2026–22042 Filed 10–28–26; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2026–7129; FRL–13593–01–R9]

Air Plan Approval; California; Reasonable Further Progress Plan for the Coachella Valley Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or “the Agency”) is proposing to approve a state implementation plan (SIP) revision from the State of California to meet the Clean Air Act (CAA) “Extreme”

nonattainment area requirements for the Riverside County (Coachella Valley), California ozone nonattainment area (“Coachella Valley”) for the 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”). Specifically, the Agency is proposing to approve the reasonable further progress (RFP) demonstration and associated emissions inventory and motor vehicle emissions budgets (“budgets”) for the Coachella Valley.

DATES: Written comments must arrive on or before November 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2026–7129 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Ledezma, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972–3985; email address: ledezma.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this proposed rule, the use

of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple abbreviations and terms in this proposed rule. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

AERR—Air Emissions Reporting Requirements
 EPA—Environmental Protection Agency
 CAA—Clean Air Act
 CARB—California Air Resources Board
 CBI—Confidential Business Information
 FHWA—Federal Highway Administration
 FTA—Federal Transit Administration
 NAA—Nonattainment Area
 NAAQS—National Ambient Air Quality Standards
 NO_x—Oxides of Nitrogen
 RACT—Reasonably Available Control Technology
 RFP—Reasonable Further Progress
 ROP—Rate of Progress
 SCAQMD—South Coast Air Quality Management District
 SRR—SIP Requirements Rule
 TPD—Tons per Day
 VMT—Vehicle Miles Traveled
 VOC—Volatile Organic Compounds

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I. Executive Summary

A. What proposed action is the EPA taking?

The EPA is proposing to approve the RFP demonstration and associated emissions inventory and budgets for the Coachella Valley 2008 ozone NAAQS Extreme nonattainment area.

B. What is the legal authority and what are the requirements?

Under CAA section 109, the EPA promulgates NAAQS for criteria air pollutants, such as ozone. In 2008, the EPA revised the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.

Requirements for an emissions inventory for nonattainment areas are specified in CAA section 172(c)(3). CAA section 172(c)(3) requires that each nonattainment plan SIP submission include a “comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area.”

Requirements for RFP for ozone nonattainment areas are specified in CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B). CAA section 172(c)(2) requires that plans for nonattainment areas provide for RFP, which is defined as such annual incremental reductions in emissions of the relevant air pollutant as are required under part D (“Plan Requirements for Nonattainment Areas”) or that may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date. CAA section 182(b)(1) specifically requires that ozone nonattainment areas that are classified as “Moderate” or above demonstrate a 15 percent reduction in volatile organic compounds (VOC) over an initial six-year period.

Requirements for conformity are specified in CAA section 176(c). CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the SIP’s goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards.

II. Background

A. Ozone Standards, Area Designations, and SIPs

Ground-level ozone pollution is formed from the reaction of VOC and oxides of nitrogen (NO) in the presence of sunlight.¹ These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and

industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Under CAA section 109, the EPA promulgates NAAQS for criteria air pollutants, such as ozone. The Agency promulgated NAAQS for ozone in 1979 and 1997.² In 2008, the EPA revised the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 ppm averaged over an 8-hour period.³ Although the Agency further revised the 8-hour ozone NAAQS to 0.070 ppm in 2015,⁴ this action relates to the requirements for the 2008 ozone NAAQS.

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas of the country as attaining or not attaining the NAAQS. Ozone nonattainment areas are further classified under CAA section 181 according to the severity of the ozone pollution problem, with classifications ranging from “Marginal” to “Extreme.” State planning and emissions control requirements for ozone are determined, in part, by the nonattainment area’s classification. In 2012, the EPA designated the Coachella Valley as nonattainment for the 2008 ozone NAAQS and the area was classified as “Severe-15.”⁵

In 2020, the EPA approved portions of two SIP revisions, the “Final 2016 Air Quality Management Plan” and the “2018 Updates to the California State Implementation Plan,” for the Coachella Valley area.⁶ Collectively, we referred to the relevant portions of the two SIP revisions as the “2016 Coachella Valley Ozone SIP.” The 2016 Coachella Valley Ozone SIP addressed ozone nonattainment area requirements, including the requirements for an emissions inventory, emissions statement rule, attainment demonstration, RFP, reasonably available control measures, contingency measures, and budgets. The Agency approved the 2016 Coachella Valley Ozone SIP as meeting all the applicable Severe-15 ozone nonattainment area requirements except for the contingency measure requirements, for which the EPA deferred action.

On March 8, 2023, the EPA granted a request from California to reclassify the

² The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (Feb. 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. See 62 FR 38856 (July 18, 1997).

³ See 73 FR 16436 (Mar. 27, 2008).

⁴ See 80 FR 65292 (Oct. 26, 2015).

⁵ 77 FR 30088 (May 21, 2012).

⁶ 85 FR 57714 (Sep. 16, 2020).

¹ The State of California typically refers to reactive organic gases (ROG) in its ozone-related submissions since VOC in general can include both reactive and unreactive gases. However, since ROG and VOC inventories pertain to common chemical species (e.g., benzene, xylene), we refer to this set of gases as VOC in this proposed rule.

Coachella Valley as Extreme for the 2008 ozone NAAQS.⁷ The SIP revisions that are the subject of today's proposed action address specific Extreme nonattainment area requirements that apply to the Coachella Valley for the 2008 ozone NAAQS.

B. The Coachella Valley Nonattainment Area

The Coachella Valley is located within Riverside County, and its boundaries generally align with the Riverside County portion of the Salton Sea Air Basin.⁸ The Coachella Valley is downwind from the South Coast Air Basin and is subject to significant transport of ozone from that area; both ozone nonattainment areas are regulated by the South Coast Air Quality Management District (SCAQMD or "District").

C. CAA and Regulatory Requirements for 2008 8-Hour Ozone Nonattainment Area SIPs

States must implement the 2008 ozone standards under Title 1, part D of the CAA, which includes CAA sections 171 through 179B of subpart 1 ("Nonattainment Areas in General") and CAA sections 181 through 185 of subpart 2 ("Additional Provisions for Ozone Nonattainment Areas"). To assist States in developing effective plans to address ozone nonattainment problems, the EPA has issued a SIP Requirements Rule for the 2008 ozone standards ("2008 Ozone SRR") that addresses implementation of the 2008 standards, including attainment dates, requirements for emissions inventories, and RFP demonstrations, as well as the transition from the 1997 ozone standards to the 2008 ozone standards and associated anti-backsliding requirements.⁹ The 2008 Ozone SRR is codified at 40 CFR part 51, subpart AA. We discuss the CAA and regulatory requirements for the elements of 2008 ozone plans relevant to this proposal in more detail in section IV of this document.

The EPA's 2008 Ozone SRR was challenged, and on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit") published its decision in *South Coast Air Quality Management District v. EPA*¹⁰ ("South Coast II")¹¹ vacating portions of the

2008 Ozone SRR. The only aspect of the *South Coast II* decision that affects this proposed action is the vacatur of the alternative baseline year for RFP plans. More specifically, the 2008 Ozone SRR required States to develop the baseline emissions inventory for RFP plans using emissions data for the most recent calendar year for which States submit a triennial inventory to the Agency under subpart A ("Air Emissions Reporting Requirements") of 40 CFR part 51, which for the 2008 ozone NAAQS was 2011. However, the 2008 Ozone SRR allowed States to use an alternative year, between 2008 and 2012, for the baseline emissions inventory provided that the State demonstrated why the alternative baseline year was appropriate. In the *South Coast II* decision, the D.C. Circuit vacated the provisions of the 2008 Ozone SRR that allowed States to use an alternative baseline year for demonstrating RFP.

III. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions

A. Summary of Submissions

On December 7, 2022, the California Air Resources Board (CARB) submitted the "Coachella Valley 75 ppb 8-Hour Ozone Reasonable Further Progress State Implementation Plan" ("2022 Coachella Valley RFP Plan" or "Plan") as a revision to the California SIP, along with a request to reclassify the Coachella Valley to Extreme with respect to the 2008 ozone NAAQS.¹² On March 8, 2023, the EPA took action to reclassify the Coachella Valley to Extreme for the 2008 ozone NAAQS.¹³ Today's proposed action addresses only the RFP demonstration and associated emissions inventories and budgets in the 2022 Coachella Valley RFP Plan for the 2008 ozone NAAQS.

CARB's submission consists of documents prepared by the District (*i.e.*, the 2022 Coachella Valley RFP Plan, District submittal cover letter, and District governing board resolution) and by CARB (*i.e.*, the CARB Staff Report and Appendices and CARB board resolution adopting the 2022 Coachella Valley RFP Plan as a SIP revision).¹⁴

decision published in 2006 also referred to as "South Coast." The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

¹² See letter dated Dec. 6, 2022, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region 9.

¹³ 88 FR 14291 (Mar. 8, 2023).

¹⁴ See four enclosures to the Dec. 6, 2022 letter from CARB to EPA Region 9: (I) District submission, including a letter from Wayne Nastri, Executive

The Plan addresses the Extreme area nonattainment requirements for RFP and the associated emissions inventory and budgets for the Coachella Valley.

B. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions

CAA sections 110(a)(1) and (2) and 110(l) require a State to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet these procedural requirements, every SIP submission should include evidence that the State provided adequate public notice and an opportunity for a public hearing consistent with the EPA's implementing regulations in 40 CFR 51.102.

The District Governing Board adopted the 2022 Coachella Valley RFP Plan on November 4, 2022, following a public comment period and hearing. CARB adopted the 2022 Coachella Valley RFP Plan as a revision to the California SIP on November 17, 2022, following a public hearing. The District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submission of the 2022 Coachella Valley RFP Plan. Therefore, we find that the Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

IV. Evaluation of the 2022 Coachella Valley RFP Plan

A. Emissions Inventories

1. Statutory and Regulatory Requirements

CAA section 172(c)(3) requires that each nonattainment plan SIP submission include a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area." The accounting required by this section provides a "base year" inventory that serves as the starting point for attainment demonstration air quality modeling, for assessing RFP, and for determining the need for additional SIP control measures. EPA regulations require that the base year be consistent

Officer, SCAQMD, to Steven S. Cliff, Ph.D., Executive Officer, CARB, and four attachments titled: (1) the District Governing Board Package, (2) Final Request to Reclassify Coachella Valley for the 2008 8-Hour Ozone Standard and Related SIP Elements Required to Update the Motor Vehicle Emissions Budgets, (3) Approved Governing Board Resolution, and (4) Proof of Publication for Notice of Public Hearing; (II) CARB Evidence of Public Notice and Transcript; (III) CARB Staff Report; and (IV) CARB Resolution 22–18 to adopt the Coachella Valley RFP Plan.

⁷ 88 FR 14291 (Mar. 8, 2023).

⁸ For a precise description of the geographic boundaries of the Coachella Valley, see 40 CFR 81.305.

⁹ See 80 FR 12264 (Mar. 6, 2015).

¹⁰ *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018).

¹¹ The term "*South Coast II*" is used in reference to the 2018 court decision to distinguish it from a

with the baseline year for the RFP demonstration, which is the most recent calendar year for which a complete triennial inventory is required to be submitted to the Agency under the Air Emissions Reporting Requirements (AERR).¹⁵

The EPA has issued guidance on the development of base year and future year emissions inventories for ozone and other pollutants.¹⁶ Emissions inventories for ozone must include emissions of VOC and NO_x and represent emissions for a typical ozone season weekday.¹⁷ States should include documentation explaining how they calculated emissions data. In estimating mobile source emissions, States should use the latest emissions models and planning assumptions available at the time they develop the SIP submission.¹⁸

2. Summary of the State’s Submission

The 2022 Coachella Valley RFP Plan includes a 2011 base year emissions inventory based on actual emissions to meet the requirements of CAA sections 172(c)(3) and 182(a)(1). The Plan also includes projected inventories for the years 2017, 2020, 2023, 2026, 2029, and the Coachella Valley’s 2031 Extreme attainment year to meet the requirements of CAA section 182(c)(2)(B).

This inventory includes VOC and NO_x emissions because these pollutants are the precursors to ozone formation and includes emissions across all source categories during an ozone season day as defined in 40 CFR 51.1100(cc). 40 CFR 51.1115(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1100(q). While the Coachella Valley has a year-round ozone season, the 2022 Coachella Valley RFP Plan identifies summer, defined as May through October, as the time when the highest concentrations of ozone occur.

A description of the base year and projected year emissions inventories can be found in Chapter 5 of the Plan. The

complete emissions inventory and documentation are found in Appendix I (“Summer Planning Emissions Inventory by Major Source Category”), and Appendix II (“Emissions Inventory Methodology for the 2008 8-Hour Ozone Extreme Area Plan Using CEPAM 2022 v1.01”) of the Plan.

VOC and NO_x emissions can be grouped into two general source categories: emissions from stationary sources and emissions from mobile sources. Stationary sources can be further divided into “point” and “area” sources. Point sources typically refer to permitted facilities that have one or more identified and fixed pieces of equipment and emissions point. Per the AERR, permitted facilities were required to report their actual emissions to the District by the facility operators through the calendar year 2011. Stationary area sources are many smaller point sources and include sources that have internal combustion engines and gasoline dispensing facilities (gas stations). These sources are not inventoried individually; their emissions are estimated as a group and reported as a single source category. Area sources consist of widespread and numerous smaller emission sources, such as small permitted facilities and households.

The mobile source category can be divided into two major subcategories: “on-road” and “off-road” mobile sources. On-road mobile sources include light-duty automobiles; light-duty, medium-duty, and heavy-duty trucks; and motorcycles. Off-road mobile sources include aircraft, locomotives, construction equipment, mobile equipment, and recreational vehicles.

CARB and the District worked together to develop the emissions inventories for the 2022 Coachella Valley RFP Plan. Data were provided by CARB, the California Department of Transportation, the Department of Motor Vehicles, the Department of Pesticide Regulation, the California Energy Commission, and regional transportation agencies to develop

estimates of mobile and area source emissions. The emission estimates for point sources reflect reported emissions, whereas estimates for mobile and area sources are based on projections obtained through use of emissions models and methodologies along with actual activity data for 2011 (*e.g.*, vehicle miles traveled). The District applied different methodologies to estimate over sixty different types of individual stationary sources. CARB and the District also reviewed the growth profiles for point and area source categories and updated them as necessary to ensure that the emission projections were based on data that reflect historical trends, current conditions, and recent economic and demographic forecasts.

CARB provided emission estimates for stationary sources, including nonagricultural diesel engines, agricultural irrigation pumps, laundering (dry cleaning), degreasing (solvents), oil and gas production, and gasoline dispensing facilities. CARB and the District estimated emissions for area sources, including consumer products, pesticides/fertilizers, fireplaces, farming operations, and other sources using models and associated methodologies.

CARB developed the emissions inventories for mobile sources. CARB estimated on-road mobile sources emissions, which include passenger vehicles, buses, and trucks, using their EMFAC2017 model.¹⁹ They calculated on-road emissions by applying EMFAC2017 emission factors to the transportation activity data provided by the Southern California Association of Governments (SCAG) from their adopted 2020 Regional Transportation Plan. CARB estimated off-road mobile source emissions using either newer category-specific models or, where a new model was not available, the OFFROAD2007 model.

Table 1 of this document provides a summary of the Coachella Valley 2011 base year VOC and NO_x emissions inventories, grouped by major source category.

TABLE 1—BASE YEAR SUMMER AVERAGE VOC AND NO_x EMISSIONS IN THE 2022 COACHELLA VALLEY RFP PLAN

Source category	2011	
	VOC (tpd)	NO _x (tpd)
Stationary and Area Sources	5.9	1.0

¹⁵ See 2008 Ozone SRR at 40 CFR 51.1115(a) and the Air Emissions Reporting Requirements at 40 CFR part 51, subpart A.

¹⁶ See “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS)

and Regional Haze Regulations” (“EI Guidance”), EPA-454/B-17-002, May 2017.

¹⁷ 40 CFR 51.1115(a) and (c), and 40 CFR 51.1100(bb) and (cc).

¹⁸ See 80 FR 12264, 12290 (Mar. 6, 2015).

¹⁹ The EPA approved EMFAC2017 for use in SIP development and transportation conformity in California at 84 FR 41717 (Aug. 15, 2019). While EMFAC2017 is not the most recently approved model in California, it was the most recently approved model when this SIP was developed.

TABLE 1—BASE YEAR SUMMER AVERAGE VOC AND NO_x EMISSIONS IN THE 2022 COACHELLA VALLEY RFP PLAN—Continued

Source category	2011	
	VOC (tpd)	NO _x (tpd)
On-Road Mobile Sources	5.6	19.0
Other Mobile Sources	4.8	7.5
Total	16.3	27.5

Source: 2022 Coachella Valley RFP Plan, Figures 5–1 and 5–2, and Appendix I.

For the purposes of the RFP demonstration, CARB developed projected inventories from the 2011 base year. These inventories form the basis of the RFP demonstration calculations and motor vehicle emissions budgets that are discussed in sections IV.B and IV.C of this document. In this section, we describe and evaluate the inventory projections to determine whether they are appropriate for use in these SIP elements.

Stationary and area source emissions estimates were projected from the base year using the California Emission

Projection Analysis Model (CEPAM 2022v1.01) and reflect expected growth trends for each source category and emissions reductions due to adopted control measures. Growth profiles for point and area sources are derived from surrogates, such as economic activity, fuel usage, population, and housing units, that best reflect the expected growth trends for each specific source category.

Mobile sources were projected using the same model as was used for the base year calculations, *i.e.*, EMFAC2017. The EMFAC model predicts activity rates

and vehicle fleet turnover by vehicle model year. The EMFAC model allows local inputs for certain parameters. In this case, local vehicle activity inputs were provided by SCAG. Off-road mobile sources are forecasted using a category-specific model, or, where a category-specific model is not available, using CARB's OFFROAD2007 model.

Tables 2 and 3 of this document provide summaries of the Coachella Valley VOC and NO_x emissions inventories for RFP baseline and milestone years, grouped by major source category.

TABLE 2—SUMMER AVERAGE VOC EMISSIONS [tpd]

Source category	2011	2023	2031
Stationary and Area Sources	5.9	6.8	7.6
On-Road Vehicles	5.6	2.6	2.2
Other Mobile	4.8	3.3	3.1
Total	16.3	12.7	12.8

Source: 2022 Coachella Valley RFP Plan, Figure 5–2 and Appendix I.

TABLE 3—SUMMER AVERAGE NO_x EMISSIONS [tpd]

Source category	2011	2023	2031
Stationary and Area Sources	1	1.6	1.4
On-Road Vehicles	19	6	5.7
Other Mobile	7.5	7.1	6.8
Total	27.5	14.6	13.9

Source: 2022 Coachella Valley RFP Plan, Figure 5–1 and Appendix I.

For future-year projections, the EPA will approve a State plan that takes emissions reduction credit for a control measure only if the Agency has approved the measure as part of the SIP. Thus, to take credit for the emissions reductions from newly adopted or amended CARB and District rules for mobile and stationary sources, the related rules must be approved by the EPA into the SIP. Appendix II of the 2022 Coachella Valley RFP Plan describes the CARB rules that were

incorporated into the on- and off-road future year inventories, along with the calculation methodology by source category.²⁰ Table 1 in Appendix II of the 2022 Coachella Valley RFP Plan shows District rules that were incorporated in the future year inventories, along with information on the EPA's approval of these rules.

²⁰ Appendix II to the 2022 Coachella Valley RFP Plan, pages II–4—II–9.

3. The EPA's Review of the State's Submission

We have reviewed the base year and milestone year emissions inventories in the 2022 Coachella Valley RFP Plan for the Coachella Valley 2008 ozone nonattainment area for consistency with CAA requirements and EPA guidance. First, we note that the inventories include estimates for VOC and NO_x for a typical ozone season weekday and that CARB has provided adequate documentation explaining how the

emissions are calculated. Second, we find that the 2011 base year emissions inventories in the Plan reflect appropriate emissions models and methodologies and therefore represent comprehensive, accurate, and current inventories of actual emissions during that year. Further, we find that CARB and the District have used the most recent planning and activity assumptions, emissions models, and methodologies in developing the RFP baseline and milestone year emissions inventories in the Plan.

Therefore, the EPA is proposing to approve the 2011 emissions inventory as meeting the requirements for a base year inventory set forth in CAA section 182(a)(1) and 40 CFR 51.1115. The projected inventories start with the 2011 baseline and project out to 2031. The Agency is proposing to find these inventories appropriate for use in developing the RFP demonstration (see section IV.B of this document) and the motor vehicle emissions budgets (see section IV.C of this document) for the Coachella Valley for the 2008 ozone standards.

B. Reasonable Further Progress Demonstration

1. Statutory and Regulatory Requirements

Requirements for RFP for ozone nonattainment areas are specified in CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B). CAA section 172(c)(2) requires that plans for nonattainment areas provide for RFP, which is defined as such annual incremental reductions in emissions of the relevant air pollutant as are required under part D ("Plan Requirements for Nonattainment Areas") or that may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date. CAA section 182(b)(1) specifically

requires that ozone nonattainment areas that are classified as Moderate or above demonstrate a 15 percent reduction in VOC between the years of 1990 and 1996. The Agency has typically referred to CAA section 182(b)(1) as the rate of progress (ROP) requirement. For ozone nonattainment areas classified as Serious or higher, CAA section 182(c)(2)(B) requires reductions averaged over each consecutive 3-year period, beginning 6 years after the baseline year until the attainment date, of at least 3 percent of baseline emissions per year. The provisions in CAA section 182(c)(2)(B)(ii) allow an amount less than 3 percent of such baseline emissions each year if the State demonstrates to the EPA that the plan includes all measures that can feasibly be implemented in the area in light of technological achievability.

In the 2008 Ozone SRR, the EPA provided that areas classified as Moderate or higher will have met the ROP requirements of CAA section 182(b)(1) if the area has a fully approved 15 percent ROP plan for the 1-hour or 1997 8-hour ozone NAAQS.²¹ For such areas, the Agency interprets the RFP requirements of CAA section 172(c)(2) to require areas classified as Moderate to provide a 15 percent emissions reduction of ozone precursors within 6 years of the baseline year. Areas classified as Serious or higher must meet the RFP requirements of CAA section 182(c)(2)(B) by providing for an 18 percent reduction of ozone precursors in the first 6-year period, and an average ozone precursor emissions reduction of 3 percent per year for all remaining 3-year periods thereafter.²² The 2008 Ozone SRR allows substitution of NO_x reductions for VOC reductions to meet the CAA section 172(c)(2) and 182(c)(2)(B) RFP requirements.²³

Except as specifically provided in CAA sections 182(b)(1)(C) and (D), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP creditable measures that occur after the baseline year are creditable for purposes of demonstrating that the RFP targets are met.²⁴ Because the EPA has determined that the passage of time has caused the effect of certain exclusions to be *de minimis*, the RFP demonstration is no longer required to calculate and specifically exclude reductions from measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; regulations concerning Reid vapor pressure promulgated by November 15, 1990; measures to correct previous RACT requirements; and measures required to correct previous inspection and maintenance programs.²⁵

The 2008 Ozone SRR requires the RFP baseline year to be the most recent calendar year for which a complete triennial inventory was required to be submitted to the EPA. For the purposes of developing RFP demonstrations for the 2008 ozone NAAQS, the applicable triennial inventory year is 2011. As discussed previously, the 2008 Ozone SRR provides States with the option to use an alternative baseline year for RFP, but that provision of the 2008 Ozone SRR was vacated by the D.C. Circuit in the *South Coast II* decision.

2. Summary of the State's Submission

The 2022 Coachella Valley RFP Plan includes an RFP demonstration developed using updated emissions estimates for the baseline, milestone, and attainment years, and updated emissions estimates relying on a 2011 baseline year.²⁶ The RFP demonstration is reproduced in Table 4 of this document.

TABLE 4—REASONABLE FURTHER PROGRESS DEMONSTRATION IN THE 2022 COACHELLA VALLEY RFP PLAN

	VOC (tpd)						
	2011	2017	2020	2023	2026	2029	2031
Baseline VOC	16.27	13.48	13.16	12.75	12.72	12.75	12.81
Transportation Conformity Rounding Margin	0	0	0	0.05	0.09	0.04	0.05
Baseline VOC + Rounding Margin	16.27	13.48	13.16	12.80	12.81	12.79	12.86
Required % Change Since 2011 Target VOC Level		18%	27%	36%	45%	54%	60%
Required tpd Reductions Since 2011		2.93	4.39	5.85	7.32	8.78	9.76
Target VOC Level		13.34	11.88	10.42	8.95	7.49	6.51
Apparent Shortfall (–)/Surplus(+) in VOC		–0.14	–1.28	–2.38	–3.86	–5.31	–6.35
Apparent Shortfall (–)/Surplus(+) in VOC, %		–1%	–8%	–15%	–24%	–33%	–39%

²¹ 80 FR 12264, 12271 (Mar. 6, 2015).

²² *Id.*

²³ *Id.*; 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B).

²⁴ 40 CFR 51.1110(a)(5).

²⁵ 40 CFR 51.1110(a)(7).

²⁶ See the RFP demonstration in the 2022 Coachella Valley RFP Plan, Chapter 6, starting on page 6–1.

TABLE 4—REASONABLE FURTHER PROGRESS DEMONSTRATION IN THE 2022 COACHELLA VALLEY RFP PLAN—Continued

	VOC (tpd)						
	2011	2017	2020	2023	2026	2029	2031
	NO _x (tpd)						
	2011	2017	2020	2023	2026	2029	2031
Baseline NO _x	27.49	19.45	17.42	14.64	14.19	14.00	13.95
Transportation Conformity Rounding Margin	0	0	0	0.01	0.01	0.09	0
Baseline NO _x + Rounding Margin	27.49	19.45	17.42	14.65	14.20	14.09	13.95
Change in NO _x tpd Since 2011		8.04	10.07	12.84	13.30	13.41	13.54
Change in NO _x Since 2011, %		29%	37%	47%	48%	49%	49%
NO _x Reductions Since 2011 Used for VOC Substitution in This Milestone Year, %		1%	8%	15%	24%	33%	39%
Apparent Shortfall (–)/Surplus (+) in NO _x , %		28%	29%	32%	25%	16%	10%
RFP Shortfall (–), If Any		0%	0%	0%	0%	0%	0%
RFP Met?		YES	YES	YES	YES	YES	YES

Source: 2022 Coachella Valley RFP Plan, Table 6–1.

The RFP demonstration calculates future year VOC targets from the 2011 baseline, consistent with CAA section 182(c)(2)(B)(i), which requires reductions of “at least 3 percent of baseline emissions each year.” The 2022 Coachella Valley RFP Plan substitutes NO_x reductions for VOC reductions²⁷ beginning in milestone year 2017, pursuant to CAA section 182(c)(2)(C). CARB concludes that the RFP demonstration in the 2022 Coachella Valley RFP Plan meets the applicable requirements for each milestone year as well as the attainment year.

3. The EPA’s Review of the State’s Submission

As discussed in section IV.A of this document, we are proposing to find that the baseline year and RFP milestone year emissions inventories are acceptable for use in the RFP demonstration. We have reviewed the calculations in Table 6–1 of the 2022 Coachella Valley RFP Plan and presented in Table 4 of this document and propose to find that the State has used an appropriate calculation method to demonstrate RFP. For these reasons, we are proposing to determine that the State has demonstrated RFP in each milestone year and the attainment year, consistent with applicable CAA requirements and EPA guidance. We therefore propose to approve the RFP demonstrations under CAA sections 172(c)(2), 182(b)(1) and 182(c)(2)(B) and 40 CFR 51.1110(a)(2)(ii).

C. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements

CAA section 176(c) requires Federal actions in nonattainment and maintenance areas to conform to the SIP’s goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards. Conformity to the SIP’s goals means that such actions will not: (1) cause or contribute to violations of a NAAQS; (2) worsen the severity of an existing violation; or (3) delay timely attainment of any NAAQS or any interim milestone.²⁸

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA’s transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, MPOs in nonattainment and maintenance areas coordinate with State and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area’s regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (“budgets”) contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Ozone plans should identify budgets for on-road emissions of ozone precursors (*i.e.*, NO_x and VOC) in the area for each RFP

milestone year (and the attainment year, if the plan demonstrates attainment).²⁹

For budgets to be approvable, they must meet, at a minimum, the EPA’s adequacy criteria at 40 CFR 93.118(e)(4). To meet these requirements, the budgets must be consistent with the attainment and RFP requirements and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.³⁰ The Agencies’ process for determining adequacy of a budget consists of three basic steps: (1) providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the budget during a public comment period; and (3) making a finding of adequacy.³¹

2. Summary of the State’s Submission

The 2022 Coachella Valley RFP Plan includes budgets for the 2023, 2026, and 2029 RFP milestone years, and the 2031 attainment year. In March 2023, the EPA found the budgets adequate for transportation conformity purposes.³²

The budgets in the 2022 Coachella Valley RFP Plan were calculated using updated vehicle miles traveled (VMT) estimates from SCAG’s “Connect SoCal 2020 Regional Transportation Plan/Sustainable Communities Strategy” (“2020 RTP/SCS”) and EMFAC2017, CARB’s latest approved version of the EMFAC model for estimating emissions from on-road vehicles operating in California at the time of SIP development, and reflect average summer weekday emissions consistent with the RFP milestone years and the 2031 attainment year for the 2008 ozone NAAQS. The conformity budgets for NO_x and VOC for each county in the

²⁷ NO_x substitution is permitted under EPA regulations. See 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B); and 80 FR 12264, 12271 (Mar. 6, 2015).

²⁸ CAA section 176(c)(1)(B)(i).

²⁹ See 40 CFR 93.102(b)(2)(i).

³⁰ See 40 CFR 93.118(e)(4)(iii), (iv) and (v).

³¹ See 40 CFR 93.118(f)(2).

³² See 88 FR 18314 (Mar. 28, 2023).

nonattainment area are provided in Table 5 of this document.

TABLE 5—BUDGETS IN THE COACHELLA VALLEY RFP PLAN
[Summer average tons per day]

Year	VOC (tpd)	NO _x (tpd)
2023	2.7	6.0
2026	2.5	5.8
2029	2.3	5.8
2031	2.2	5.7

Source: 2022 Coachella Valley RFP Plan, Table 7–1.

3. The EPA's Review of the State's Submission

The EPA previously found the budgets in the 2022 Coachella Valley RFP Plan to be adequate based on our adequacy criteria in 40 CFR 93.118(e)(4) and (5).³³ On December 21, 2022, the Agency announced the availability of the 2022 Coachella Valley RFP Plan and related budgets on the EPA's transportation conformity website, requesting comments by January 20, 2023.³⁴ The Agency received no comments from the public. By letter dated March 17, 2023, the EPA determined that the 2023, 2026, 2029, and 2031 budgets were adequate for transportation conformity purposes.³⁵ On March 28, 2023, we published a notice of adequacy in the **Federal Register**.³⁶ Since the effective date of our adequacy finding, April 12, 2023, the U.S. Department of Transportation and the applicable metropolitan transportation organization, SCAG, have been using the adequate budgets for transportation conformity determinations for the area. The Agency is not required under its transportation conformity rule to find motor vehicle emissions budgets adequate prior to proposing approval of them, but in this instance, we completed the adequacy review of these motor vehicle emissions budgets prior to our proposed action on the 2022 Coachella Valley RFP Plan.

The EPA is proposing to approve the 2023, 2026, 2029, and 2031 budgets in the 2022 Coachella Valley RFP Plan for transportation conformity purposes because we find that the budgets are consistent with the emission control

measures in the SIP and RFP demonstration for the 2008 ozone NAAQS,³⁷ and that the RFP demonstration and budgets rely on the same base year and projected emissions inventories calculated using EMFAC2017 and vehicle activity data from SCAG's 2020 RTP/SCS.

The 2022 Coachella Valley RFP Plan budgets as shown in Table 5 of this document are consistent with the RFP demonstration, are clearly and precisely quantified, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). For these reasons, the EPA proposes to approve the budgets in Table 5 of this document. If we finalize approval of the budgets in the 2022 Coachella Valley RFP Plan as proposed, they will replace the budgets previously found adequate for use in conformity determinations by transportation agencies in the Coachella Valley.

V. Proposed Action

For the reasons discussed in this proposed rulemaking, under CAA section 110(k)(3), the EPA is proposing to approve as a revision to the California SIP the Extreme area RFP demonstration and associated emissions inventory and budgets for the Coachella Valley with respect to the 2008 ozone NAAQS. This proposed rulemaking does not address any other Extreme area requirements for the Coachella Valley with respect to the 2008 ozone NAAQS. CARB submitted other 2008 ozone NAAQS Extreme area elements for the Coachella Valley on October 30, 2024,³⁸ and we plan to act on this submittal at a later date.

³⁷ Because the EPA has not approved an Extreme area attainment demonstration for the Coachella Valley for the 2008 ozone NAAQS, the EPA is not assessing the consistency of the budgets with respect to an attainment demonstration as part of this action. An attainment demonstration was not included in the 2022 Coachella Valley RFP Plan.

³⁸ Letter dated Oct. 29, 2024, from Steven S. Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region 9.

The EPA is soliciting public comments on this proposed action, including our rationale and any other pertinent matters related to the issues discussed herein. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

VI. Statutory and Executive Order Reviews

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

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

³³ 88 FR 18314.

³⁴ The EPA maintains a website that lists motor vehicle emissions budgets the EPA is reviewing or has reviewed for adequacy. *See* the EPA adequacy review web page: <https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity>.

³⁵ Letter dated Mar. 17, 2023, from Elizabeth J. Adams, Air and Radiation Division Director, EPA Region 9, to Steven S. Cliff, Executive Officer, CARB.

³⁶ 88 FR 18314.

Order 13132 (64 FR 43255, Aug. 10, 1999);

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 19, 2026.

Michael Martucci,

Acting Regional Administrator, EPA Region IX.

[FR Doc. 2026-22055 Filed 10-28-26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA-R04-OAR-2026-0034; FRL-13499-01-R4]

Air Plan Approval and Air Quality Designation; TN; Attainment Plan and Redesignation of the Sullivan County Nonattainment Area for the 2010 1-Hour Primary SO₂ NAAQS

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is proposing to approve the State of Tennessee's attainment plan for the Sullivan County Nonattainment Area (Sullivan County Area or Area) for the 2010 Sulfur Dioxide (SO₂) National Ambient Air Quality Standards

(NAAQS). Additionally, the EPA is proposing to determine that the Area has attained the 2010 SO₂ NAAQS and to approve Tennessee's maintenance plan for continued attainment. With these approvals, the EPA is proposing to approve Tennessee's comprehensive source-specific SO₂ permitted limits for two facilities in the Area, other control measures, and provisions for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT), reasonable further progress (RFP), a modeling demonstration of SO₂ attainment and maintenance, and to approve Tennessee's request to redesignate the Area from nonattainment to attainment of the 2010 SO₂ NAAQS. The EPA is taking these actions in accordance with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before November 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2026-0034 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at williamsmiles.pearlene@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA uses multiple abbreviations and terms in this NPRM. While this list may not

be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

AQS—Air Quality System
BART—Best Available Retrofit Technology
CAA—Clean Air Act
CBI—Confidential Business Information
CEMS—Continuous Emission Monitoring Systems
CEV—Critical Emission Value
CFR—Code of Federal Regulations
DSI—Dry Sorbent Injection
DV—Design Value
EPA—Environmental Protection Agency
FFA—Finding of Failure to Attain
FFS—Finding of Failure to Submit
FR—Federal Register
HWI—Hazardous Waste Incinerator
LTA—Longer Term Average
MMBtu—Million British Thermal Units
MOVES—EPA's Motor Vehicle Emission Simulator
MRR—Monitoring, Recordkeeping, and Reporting
NAAQS—National Ambient Air Quality Standard
NEI—National Emissions Inventory
NNSR—Nonattainment New Source Review
NPRM—Notice of Proposed Rulemaking
ppb—Parts per billion
ppm—Parts per million
PES—Permitted Emission Source
PSD—Prevention of Significant Deterioration
PTE—Potential to Emit
RACM—Reasonably Available Control Measures
RACT—Reasonably Available Control Technology
RFP—Reasonable Further Progress
SIP—State Implementation Plan
SO₂—Sulfur Dioxide
TDEC—Tennessee Department of Environment and Conservation
TSD—Technical Support Document

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I. Executive Summary

A. What action is the EPA taking?

The Environmental Protection Agency (EPA, or Agency) is proposing to approve Tennessee's remaining required State Implementation Plan (SIP) elements which provide for attainment

of the 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). Specifically, the EPA is proposing to approve the following elements of the Tennessee Department of Environment and Conservation (TDEC)'s February 9, 2023, nonattainment SIP submission: (1) Reasonably Available Control Technology (RACT) and Reasonably Available Control Measures (RACM) determination; (2) reasonable further progress (RFP); (3) the attainment demonstration; (4) permanent and enforceable emission limits and other control measures that provide for attainment of the NAAQS;¹ and (5) contingency measures.

The EPA is also proposing to take the following actions addressing the TDEC's June 18, 2025, redesignation request and SIP submission,² as supplemented on January 27, 2026, and May 20, 2026, and clarified on August 20, 2026: (1) to approve Tennessee's plan for maintaining the 2010 SO₂ NAAQS (maintenance plan) in the Sullivan County, Tennessee, SO₂ nonattainment area (or Area), including provisions for RACM and RACT, source-specific SO₂ permitted limits, other control measures and associated monitoring, recordkeeping, and reporting (MRR) parameters for two facilities in the Area—Eastman Chemical (Eastman) and Primerster;³ (2) to determine that the Sullivan County Area has attained the 2010 SO₂ NAAQS as a result of compliance with permitted limits and control measures for Eastman and Primerster; and (3) to redesignate the Sullivan County Area to attainment for the 2010 SO₂ NAAQS. These proposed actions are summarized below and are described in greater detail throughout this Notice of Proposed Rulemaking (NPRM).

The EPA is proposing to approve Tennessee's maintenance plan for the Sullivan County Area as meeting the requirements of section 175A of the Act and incorporate it into the SIP. The maintenance plan is designed to keep

the Sullivan County Area in attainment of the 2010 SO₂ NAAQS through 2037. The June 18, 2025, submission also includes source-specific SO₂ permitted limits for Eastman and Primerster, other control measures, and provisions for RACM and RACT which are being proposed for approval and incorporation into the SIP.

The EPA is also proposing to determine that the Sullivan County Area has met the requirements for redesignation under CAA section 107(d)(3)(E). Accordingly, the Agency is proposing to approve Tennessee's request to change the legal designation of Sullivan County as found at title 40 of the Code of Federal Regulations (CFR) part 81, from nonattainment to attainment for the 2010 SO₂ NAAQS.

B. What is the legal authority and what are the requirements?

CAA section 110 includes relevant statutory provisions for SIP requirements, which States develop and submit for EPA approval. Under CAA section 110(k)(3), the EPA shall approve a SIP submission, in whole or in part, if the submission meets all applicable requirements of the CAA. CAA section 172 sets forth the general requirements for nonattainment plans. CAA section 172(c) contains nine requirements for nonattainment plan provisions.

CAA section 107(d)(3)(D) establishes the process for redesignations. Under that provision, the EPA must approve or deny a State's redesignation request and may redesignate a nonattainment area to attainment only after determining that the five criteria set forth in CAA section 107(d)(3)(E) have been satisfied. CAA section 175A(a) requires each State submits a request under CAA section 107(d) for redesignation of a nonattainment area to attainment to submit a SIP revision providing for maintenance of the relevant NAAQS for at least 10 years after redesignation. Pursuant to CAA section 107(d)(3)(E)(iv), the EPA cannot redesignate a nonattainment area to attainment unless it has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A.

II. Background

Under CAA section 109, the EPA has established primary and secondary NAAQS for certain air pollutants (referred to as "criteria pollutants") and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards, the attainment and

maintenance of which the EPA has determined are requisite to protect the public health with an adequate margin of safety. The secondary NAAQS represent ambient air quality standards, the attainment and maintenance of which the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

Under the CAA, the EPA must establish NAAQS for criteria pollutants, including SO₂. SO₂ is released into the atmosphere primarily through the burning of fossil fuels for power generation and certain industrial processes. On June 22, 2010, the EPA promulgated the revised primary SO₂ NAAQS, establishing a new 1-hour primary standard of 75 parts per billion (ppb).⁴ Under the EPA's regulations at 40 CFR part 50, the 2010 SO₂ NAAQS is met at a monitoring site when the design value⁵ is less than or equal to 75 ppb (based on the rounding convention in 40 CFR part 50, appendix T).⁶ Ambient air quality monitoring data for the three-year period must meet a data completeness requirement. A year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days in the quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including State-flagged data affected by exceptional events that have been approved for exclusion by the Administrator, are reported.⁷

Upon promulgation of a new or revised NAAQS, CAA section 107(d) requires the EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS.⁸ Effective October 4, 2013, the EPA designated the Sullivan County Area as nonattainment based on a 2009 through 2011 three-year design value of 196 ppb from an air quality SO₂ monitor operating at the time of designation.^{9 10}

The Sullivan County Area is comprised of a circle with a three-kilometer (km) radius having its center at coordinates 36.5186 N; 82.5350 W, at

¹ Where noted, the emission limits and control measures that are also submitted in the June 18, 2025, submission include updates to the emission limits or associated monitoring, recordkeeping, or reporting, and the most up-to-date source-specific permit terms are being proposed to be incorporated into the SIP.

² TDEC's submission providing the redesignation request and maintenance plan is dated June 11, 2025, under a cover letter dated June 17, 2025. The EPA received the final package on June 18, 2025, thus this submission is identified as TDEC's June 18, 2025, submission throughout this proposed rulemaking.

³ Primerster is a nearby cellulose manufacturing facility in the Sullivan County Area southwest of Eastman. Primerster operates under the parent company, Cerdia.

⁴ See 75 FR 35520 (June 22, 2010).

⁵ For the 2010 SO₂ NAAQS, the design value is calculated as the three-year average of the annual 99th percentile of daily maximum 1-hour average concentrations of SO₂.

⁶ See 40 CFR 50.17(b).

⁷ See 40 CFR part 50, Appendix T, section 3.1(b).

⁸ See CAA section 107(d)(1)(A)(i).

⁹ See 78 FR 47191 (Aug. 5, 2013).

¹⁰ Air Quality System (AQS) Site ID: 47–163–0007.

the B-253 powerhouse at Eastman in Kingsport, Tennessee, which encompasses the SO₂ monitor that was operating at the time of designation.¹¹ Eastman produces organic acids, aldehydes, esters, polymers, cellulose esters, specialty plastics, and acetate fibers, and is the primary SO₂-emitting point source located within the Sullivan County Area. The facility also generates process steam and electricity for most of its operations, including hazardous waste combustion and wastewater treatment. Eastman SO₂ emission sources include three powerhouses and one incinerator complex as defined below, and several smaller emitters:

- Powerhouse B-83 consists of seven coal-fired boilers, denoted as B-18-B-24, which provide steam for facility operations.
- Powerhouse B-253 consists of five coal-fired boilers, B-25-B-29, which provide steam for facility operations.
- Powerhouse B-325 consists of two coal-fired boilers, B-30 and B-31, which provide steam for facility operations.
- Incinerator Complex B-248 consists of three hazardous waste incinerators (HWIs): one liquid chemical waste incinerator, B-248-2 (Vent A), and two rotary kilns that can burn solid or liquid chemical waste, B-248-1 (Vents D and E).

The other SO₂ source within the nonattainment area is Primerster. The Primerster facility consists of one main SO₂ emitter—a cellulose scrap recovery process B-441-2 (Vent C).

On March 18, 2016, the EPA published a finding of failure to submit (FFS) a complete SIP pursuant to CAA section 110(k)(1)(B) because Tennessee had failed to submit the SO₂ nonattainment SIP by the submission deadline of April 4, 2015.¹² Tennessee was required to address the Sullivan County Area's nonattainment area planning obligations by this deadline to demonstrate it would attain the NAAQS no later than the October 4, 2018, statutory attainment date.¹³ This finding initiated a deadline of October 18, 2017, under CAA section 179(a), for the imposition of offset and highway funding sanctions unless Tennessee submitted a complete SIP and the EPA deemed it complete by that date. Additionally, under CAA section 110(c), the finding triggered a requirement that the EPA promulgate a Federal

Implementation Plan within two years of the finding's effective date (*i.e.*, April 18, 2018) unless Tennessee submitted, and the EPA approved, the required SIP submission by that date. On May 12, 2017, Tennessee submitted a nonattainment SIP with a modeled attainment demonstration (first nonattainment SIP).¹⁴ On October 10, 2017, the EPA determined that Tennessee's May 12, 2017, nonattainment SIP was complete pursuant to 40 CFR part 51, appendix V; thus, the CAA section 179(a) sanctions were not imposed.

The EPA proposed to approve Tennessee's May 12, 2017, nonattainment SIP for the Sullivan County Area on June 29, 2018, and received adverse comments.^{15 16} Subsequently, in 2019, ambient monitors in the Area recorded exceedances of the 2010 SO₂, and in response, Eastman developed and implemented operational changes as necessary to prevent future monitored violations.

The EPA was subsequently sued by the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club¹⁷ for not determining whether the Sullivan County Area attained the 2010 SO₂ standard by the October 4, 2018, statutory attainment date.¹⁸ On June 25, 2021, the EPA entered into a consent decree requiring the Agency to finalize by March 31, 2022, a determination as to whether the Sullivan County Area had attained the 1-hour SO₂ standard by the October 4, 2018, attainment date.

For the Area to have attained the 2010 SO₂ NAAQS by the October 4, 2018, attainment date, the 1-hour SO₂ design

value needed to be equal to or less than 75 ppb for the 1-hour standard based upon an available quality-assured and certified air quality monitoring data from January 2015 through December 2017 at each eligible monitoring site. On April 5, 2022, the EPA finalized a finding of failure to attain (FFA) for the Sullivan County Area, effective May 5, 2022, in which the Agency determined that the Area did not attain the 1-hour SO₂ standard by October 4, 2018.¹⁹

The EPA's FFA triggered a requirement pursuant to CAA section 179(d) for Tennessee to submit to the EPA a revised nonattainment SIP for the Sullivan County Area, within one year of the FFA publication in the **Federal Register** (*i.e.*, by April 5, 2023), that provided for attainment of the 2010 SO₂ standard as expeditiously as practicable but no later than five years from the FFA's **Federal Register** publication date (*i.e.*, April 5, 2027).

In response to the EPA's April 5, 2022, FFA, TDEC submitted a revised nonattainment SIP (second nonattainment SIP) on February 9, 2023, which provided for modeled attainment of the 2010 SO₂ NAAQS based on enforceable control measures for the three coal-fired boilers at Eastman established in SIP operating permit No. 080222. Additionally, the February 9, 2023, nonattainment SIP included existing SO₂ emission limits for other Eastman sources and Primerster as measures to be adopted into the SIP.

On June 18, 2025, TDEC submitted a request to the EPA to redesignate the Sullivan County Area from nonattainment to attainment, with an accompanying SIP revision consisting of a maintenance plan for the Area. The submission also included source-specific SO₂ permitted limits for two facilities in the Area, other control measures, and provisions for RACM and RACT that are being proposed for approval and incorporation into the SIP. Tennessee supplemented the June 18, 2025, submission on January 27, 2026 and May 20, 2026, providing corrections and clarifications to portions of the SIP narrative and attachments and further clarified its submission via email on August 20, 2026. The EPA is proposing to approve elements of Tennessee's February 9, 2023, second nonattainment SIP and Tennessee's June 18, 2025, submission, as supplemented on January 27, 2026 and May 20, 2026, and clarified on August 20, 2026, as discussed in further detail below.

¹¹ For exact descriptions of the Sullivan County Area, refer to 40 CFR 81.343.

¹² See 81 FR 14736 (Mar. 18, 2016).

¹³ See *Id.* The FFS, effective April 18, 2016, found that 16 nonattainment areas in 11 States, which included Sullivan County, Tennessee, had failed to submit the required SO₂ nonattainment SIPs.

¹⁴ Tennessee's May 12, 2017, nonattainment SIP was submitted with a cover letter dated May 11, 2017. In Tennessee's redesignation request, TDEC refers to this nonattainment SIP with the May 11, 2017, date.

¹⁵ See 83 FR 30609 (June 29, 2018).

¹⁶ The EPA finalized only the portions of the attainment plan that consisted of the emissions inventory and nonattainment new source review requirements of 172(c)(3) and (5), respectively, for which the Agency did not receive adverse comments in the June 29, 2018, NPRM. Tennessee withdrew the remaining portions of the May 12, 2017, attainment demonstration from EPA consideration on April 29, 2025, in a letter dated April 28, 2025, thus the EPA has no further obligation to act on the May 12, 2017, attainment demonstration. This letter is included in the docket for this action.

¹⁷ *Center for Biological Diversity et al. v. Regan*; Case No. 3:20-cv-05436-EMC (N.D. Cal.).

¹⁸ Under CAA section 179(c), within six months of the attainment date, the EPA is required to determine based on the area's air quality as of the attainment date, whether an area attained by the attainment date. If the EPA determines that an area failed to attain by the attainment date, the Agency is required to publish the determination in the **Federal Register** pursuant to CAA section 179(c)(2).

¹⁹ See 87 FR 19645 (Apr. 5, 2022).

III. Nonattainment Planning and Redesignation

A. Requirements for SO₂ Nonattainment Areas

All States must submit SIPs or SIP revisions to show they have the basic air quality management program components in place to implement a new or revised NAAQS, as specified in CAA section 110(a)(1). These plans are called “infrastructure SIPs.” For areas designated nonattainment for a specific NAAQS, States must also submit “nonattainment plans” that outline strategies and emissions control measures and demonstrate how the area will improve in air quality as well as attain and maintain the NAAQS.²⁰

Under CAA sections 110(a)(1) and (2), States are required to submit “infrastructure SIPs” to ensure that they have the basic air quality management program components in place to provide for implementation, maintenance, and enforcement of the NAAQS, including the 2010 1-hour SO₂ NAAQS. The EPA approved Tennessee’s infrastructure SIP for the 2010 1-hour SO₂ NAAQS.²¹ For the 2010 1-hour SO₂ NAAQS, Tennessee’s infrastructure SIP addressed CAA sections 110(a)(2)(A) through (H) and (J) through (M), except 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, *i.e.*, nonattainment new source review (NNSR). CAA sections 110(a)(2)(I) and (K), which specifically address the nonattainment plan provisions, are addressed in section V.B of this NPRM.

CAA section 110(l) contains two main provisions applicable to SIPs, including nonattainment plans. First, CAA section 110(l) requires that each SIP revision submitted by a State must be adopted by a State after reasonable notice and public hearing. Second, under CAA section 110(l), the EPA may not approve a SIP if it would interfere with any applicable requirement concerning NAAQS attainment, reasonable further progress toward attainment, or any other applicable requirement of the CAA. For the reasons discussed in section V.D of this NPRM, the EPA is proposing that Tennessee has met these requirements.

Nonattainment plans must meet the applicable requirements of the CAA, specifically CAA title I, section 110 and part D. To address plan requirements for nonattainment areas, there are two elements of CAA section 110(a)(2) pertaining to part D in title I of the CAA that are outside the scope of

infrastructure SIPs. The first is CAA section 110(a)(2)(C) to the extent it refers to NNSR under part D of title I of the CAA, and the second is CAA section 110(a)(2)(I) in its entirety.²² For the first of these two elements, the EPA approved Tennessee’s SIP revisions comprising the State’s rules for NNSR most recently on July 30, 2012.²³ For the second of these two elements, the EPA’s “SIP Lean Toolkit for Collaboration Between EPA and Air Agencies,” December 6, 2019 (2019 SIP Lean Toolkit)²⁴ identifies CAA sections 172, 191, and 192 as the applicable planning requirements specific to SO₂ nonattainment areas.

In areas designated as nonattainment for a particular NAAQS, CAA section 172 includes nonattainment plan provisions that require States to submit SIPs that demonstrate the affected area will attain the relevant NAAQS as expeditiously as practicable, but no later than the applicable statutory attainment date. To support such an attainment demonstration for SO₂ nonattainment plans, the EPA’s 2019 SIP Lean Toolkit specifies the applicable provisions of the CAA as sections 172(a)(2), (b), (c)(1) through (c)(6), and (c)(9). As discussed in section V.B of this NPRM, the EPA is proposing to find that Tennessee’s 2023 second nonattainment plan meets each of these applicable provisions of CAA section 172.

CAA section 191(a) directs States to submit SIPs to the EPA for areas designated as nonattainment with respect to the primary NAAQS for sulfur oxides, nitrogen dioxide, or lead within 18 months of the effective date of the designation. As noted above, on March 18, 2016, the EPA determined that Tennessee failed to submit a complete SIP within 18 months of the effective designation of the Sullivan County Area to nonattainment. TDEC initially submitted a May 12, 2017, attainment SIP following the FFS. CAA section 192(a) requires that SIPs for nonattainment areas must provide for attainment of the relevant NAAQS as expeditiously as practicable, but no later than five years from the effective date of the nonattainment designation. However, on April 5, 2022, the EPA determined that the State failed to attain

by the applicable attainment date, triggering a requirement under CAA section 179(d) to submit a SIP revision by April 5, 2023 including “such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts” and which would provide for attainment by April 5, 2027.²⁵ As discussed in section V.B of this NPRM, Tennessee’s 2023 second nonattainment SIP includes an attainment demonstration for the Sullivan County Nonattainment Area that demonstrated attainment of the 2010 1-hour SO₂ NAAQS as expeditiously as practicable, by the date of the June 18, 2025, redesignation request and maintenance plan, and in less than five years from the April 5, 2022, publication date.

B. Criteria for Redesignation

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, CAA section 107(d)(3)(E) allows for redesignation provided that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations, and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such an area has met all requirements applicable to the area for the purposes of redesignation under CAA section 110 and part D.

IV. Tennessee’s Submissions

Tennessee’s February 9, 2023, second nonattainment SIP includes: (1) RACT and RACM determinations; (2) reasonable further progress (RFP); (3) a base year nonattainment inventory; (4) a projected attainment year inventory; (5) the attainment demonstration; (6) permanent and enforceable emission limits and other control measures that provide for attainment of the NAAQS;

²⁵ The EPA did not prescribe additional measures under CAA section 179(d)(2) at the time of the finding.

²² See *Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)*; EPA, Sep. 13, 2013, can be found at https://www.epa.gov/sites/default/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf at p. 4, available in the docket for this action.

²³ See 77 FR 44481 (July 30, 2012).

²⁴ https://www.epa.gov/sites/default/files/2019-12/documents/sip_lean_toolkit_for_collaboration_between_epa_and_air_agencies.pdf at pp. 22–23.

²⁰ See CAA section 172(c).

²¹ See 81 FR 85410 (Nov. 28, 2016), 83 FR 48237 (Sept. 24, 2018), and 88 FR 53800 (Aug. 9, 2023).

and (7) contingency measures. Tennessee's June 18, 2025, submission includes a request for the EPA to redesignate the Sullivan County Area to attainment for the 2010 SO₂ NAAQS and to approve the associated SIP revision containing a maintenance plan for the Area. The submission also requests that the EPA adopt into the SIP source-specific SO₂ permit limits, other control measures, and associated MRR compliance parameters for Eastman and Primerster, as well as RACT and RACM provisions for the Area.²⁶

As noted previously, on January 27, 2026 and May 20, 2026, TDEC transmitted to the EPA supplements to the June 18, 2025, submission that make corrections and clarifications to portions of the SIP narrative and attachments, including to SIP operating permit No. 082237 in Attachment J1 of the June 18, 2025, submission and further clarified its submission in an email on August 20, 2026.

The January 27, 2026, supplement revises the Description of Monitoring Protocol (Monitoring Protocol) for Eastman B-248 HWIs at Appendix 5 of SIP operating permit No. 082237 to establish a practicably enforceable process to obtain monitoring values and demonstrate compliance with the modeled SO₂ emission limit. The revised Monitoring Protocol was established in Appendix 1 of a new SIP operating permit No. 083740 that TDEC issued on January 14, 2026.²⁷ See section V.A.5 below for additional discussion of the parametric monitoring changes established in SIP operating permit No. 083740 for Eastman's HWI.²⁸

On May 20, 2026, Tennessee submitted a second supplement correcting portions of the State's 2025 redesignation request and maintenance plan narrative, attachments, and SIP operating permit No. 082237.²⁹ The following discussion summarizes the

corrections and clarifications to TDEC's SIP narrative and attachments.

The May 20, 2026, supplement adds a detailed discussion and Table 4: SO₂ Emissions from Batch Chemical Manufacturing (MSOP-25, Permitted Emission Source (PES) OC-BATCH) in Section 2.2 (Air Quality Modeling) of the redesignation request and maintenance plan submission that explains the State's rationale to consider Eastman's batch specialty chemical operations as an intermittent emissions source and exclude it from the redesignation SIP modeling analysis.

The supplement narrative includes Table 2, which provides changes to Table 2-7 (Summary of Model Results) of the redesignation request and maintenance plan submission and lists the maximum modeled concentration for each air dispersion model run. The original Table 2-7 in the June 18, 2025, submission did not fully summarize the results of all the model runs performed by Tennessee. The supplement replaces Table 2-7 with a comprehensive list of all modeling run results in Table 2: Summary of Model Results (Updated Version of Table 2-7 of the June 18, 2025, submission) and Table 3: Description of Critical Model Runs. Table 2 also includes the latitude, longitude, and distance to the nearest monitor for all of Tennessee's model runs.

The supplement provides a longer term averaging (LTA) discussion for the B-351 coal-gasification flare, including a summary of the actual flare emissions for 2019 through 2021 listed in Table 1. The new discussion explains the State's procedures and rationale for calculating the 30-day rolling average 14.6 pounds per hour (lb/hr) SO₂ emission limit that TDEC requested the EPA adopt into the SIP as a permanent control measure in the June 18, 2025, submission (*see* section 4.0). Attachment D of the supplement includes a revised spreadsheet of hourly flare emissions data that shows the frequency over the critical emission value (16.28 lb/hr) for calendar years 2019 and 2020.

Table 4-4 of the June 18, 2025, submission and TDEC's August 20, 2026, email clarify the list of the specific emission limits Tennessee requests that the EPA adopt into the SIP as permanent emission reduction measures. The supplement corrects the numerical SO₂ emission limit for the B-351 coal gasification flare from 16.28 lb/hr to 14.6 lb/hr in section 4 of the narrative. The revised Table 4-4 in Attachment C of the supplement replaces the original Table 4-4 in the

June 18, 2025, submission.³⁰ TDEC also replaces the numerical limit in SIP permit No. 082237 (*see* discussion below).

The supplement also corrects an entry in the June 18, 2025, submission for Table 4-3 (Calculation of 30-Day Rolling Average Emission Limit, Coal Gasification Flare). Although Table 4-3 was referenced in the narrative table of contents during the drafting process, the flare discussion was moved to Attachment I prior to public participation and Board approval. As a result, Table 4-3 was missing from the June 18, 2025, submission, and the supplement includes this Table as Table 11-2 of Attachment II: Modeling of Flare Actual Emissions.

The supplement also revises the contingency measure trigger language in section 6 of the June 18, 2025, submission narrative to add the phrase "any calendar year" before the phrase "during the maintenance period" to clarify a full system audit is required if a monitor in the maintenance area records four exceedances in any calendar year within the maintenance period. The supplement also corrects the citation to CAA section 172(c)(9) by replacing it with a citation to section 175A in section 6 of the narrative.

The following discussion summarizes corrections and clarifications to SIP operating permit No. 082237 (Amendment #1) in TDEC's May 20, 2026, supplement to the June 18, 2025, submission. The revisions to the contingency measure language including the CAA section 175A citation in section 6.0 of the narrative discussed above is also updated in the SIP permit contingency measure at Condition G4. Condition S3-1 is revised to add the 14.6 lb/hr numerical SO₂ emission limit for the B-351 coal gasification flare at new subparagraph B (*see* section V.A.6 of this NPRM) and clarify that Conditions S3-1 A and C, along with Compliance Method B, are not requested for incorporation into the SIP. Appendix 3 of the permit is revised to clarify the Monitoring Protocol and compliance method to calculate the SO₂ emissions for the B-351 coal gasification flare. Finally, the supplement clarifies that SIP permit No. 083740 supersedes the revised permit No. 082237 for the B-248 HWIs.

V. The EPA's Analysis of Tennessee's Submissions

In accordance with the CAA, the EPA is proposing to approve elements of Tennessee's February 9, 2023, second

²⁶ See section V.A below.

²⁷ See the January 27, 2026, supplement in the docket for this NPRM.

²⁸ Parametric monitoring is a common method to ensure continuous compliance with an emissions limit in lieu of continuous direct sampling/monitoring of the subject pollutant, in this case SO₂. This is a common regulatory approach used in various federal regulations such as the Maximum Achievable Control Technology and New Source Performance Standards. In parametric monitoring, certain performance parameters that are critical to the proper operation of the emission control device are continuously monitored. These parameters can include scrubber recirculation flow, pH, and pressure drop. The compliance parameter minimum levels are typically established during emission source testing to ensure operating at those parameter levels meets the underlying emission control requirement.

²⁹ See SIP permit #083740 in TDEC's January 27, 2026, supplement in the docket for this NPRM.

³⁰ See a redline version of Table 4-4 in Attachment C of TDEC's May 20, 2026, supplement.

nonattainment SIP. The EPA is also proposing to approve Tennessee's June 18, 2025, submission, as supplemented on January 27, 2026, and May 20, 2026, and as clarified on August 20, 2026, for the 2010 SO₂ NAAQS. In this section of the NPRM, the EPA analyzes the source-specific SO₂ emission limits, other control measures, and MRR compliance parameters the State requested that the EPA approve into the SIP from the February 9, 2023, submission and June 18, 2025, submission, as supplemented, and the consistency of the June 18, 2025, submission, as supplemented, with the five redesignation criteria provided under CAA section 107(d)(3)(E) (section V.C).

A. Source-Specific SO₂ Emission Limits and Other Control Measures

TDEC's February 9, 2023, submission requests that the EPA incorporate measures into the SIP that provide for attainment, thereby making them permanent and enforceable. TDEC's June 18, 2025, submission requests that the EPA redesignate the Sullivan County Area from nonattainment to attainment based, in part, on the implementation of new enforceable SO₂ emission reducing control measures and existing limits for the primary SO₂ sources in the Area. The June 18, 2025, submission also resubmits the SO₂ emission reducing control measures and existing emission limits from the February 9, 2023, submission, in some cases with updated emission limits or revised associated MRR. Additionally, some of these control measures and limits are already incorporated into Tennessee's SIP.³¹ For the remaining control measures and limits relied upon for demonstrating attainment and meeting the nonattainment SIP requirements, Tennessee's February 9, 2023, submission requests that the EPA make these enforceable SO₂ emission limits, other control measures, and MRR compliance parameters permanent via incorporation into the SIP for Eastman's coal-fired boilers and other significant SO₂-emitting sources at Eastman established in SIP operating permit No. 080222 and prevention of significant deterioration (PSD) permits Nos. 955272F and 966859F, and for the nearby source, Primerster, in title V operating permit No. 574994. Tennessee's June 18, 2025, submission requests that the EPA incorporate the SO₂ emission limits, other control measures, and MRR compliance parameters into the SIP for Eastman's

coal-fired boilers and other significant SO₂ emitting sources at Eastman that have significantly reduced SO₂ emissions in the Sullivan County Area, resulting in monitored and modeled attainment of the 2010 SO₂ standard, as well as existing emission limits for other process emission sources at Eastman and for the nearby source, Primerster. Specifically, the June 18, 2025, submission, as supplemented, requests that the EPA incorporate emission limits and control measures and associated MRR for: Eastman's SIP operating permit No. 082237 (Amendment #1), which supersedes SIP operating permit No. 080222; Eastman's SIP operating permit No. 083740, which supersedes SIP operating permit No. 082237 for specific emission units; Eastman's PSD construction permits Nos. 955272F and 966859F; and Primerster's title V operating permit No. 574994.³²

As discussed above in section II, Eastman is the primary SO₂ emitting point source located within the Sullivan County Area. The enforceable control measures are responsible for reducing SO₂ emissions at Eastman by approximately 85 percent and a significant decrease in ambient SO₂ monitored concentrations within the Area to support the State's request to redesignate the area based on permanent and enforceable measures. Additionally, the SO₂ emissions from Primerster were assessed for any potential contribution to monitored and modeled violations of the 1-hour standard.

Section 4 of the February 9, 2023, submission and Section 4 of the June 18, 2025, submission discuss the enforceable control measures implemented at Eastman's coal-fired boilers, HWIs, coal gasification flares, and other existing emitting sources, and at Primerster. Table 4-4 in the submission lists the specific numerical SO₂ emission limits and/or qualitative control measures; the enforceable permits authorizing the measures and the associated conditions for each permit and source emission unit; and the MRR compliance parameters for sources at Eastman and Primerster for incorporation into the SIP.^{33 34} As discussed in this section of the NPRM,

³² See Table 1B, below, for a list of control measures proposed to be incorporated into the SIP.

³³ A copy of each enforceable permit initially requested for incorporation into the SIP in the February 9, 2023, submission is provided in Attachment I of that submission.

³⁴ A copy of each enforceable permit is provided in Attachment J of the June 18, 2025, submission, Attachment A of the January 27, 2026, supplement, Attachments A and B of the May 20, 2026, supplement, or Attachment I of the February 9, 2023, submission included in the docket of this NPRM.

the EPA incorporated some of these permit conditions into the SIP after June 18, 2025.

On January 27, 2026, Tennessee provided a supplement to the June 18, 2025, submission. This supplement contains operating permit No. 083740, which supersedes operating permit No. 082237 in the June 18, 2025, submission only for Eastman's HWIs B-248-1 and 248-2 and modifies the Monitoring Protocol and compliance methodology for these units at Appendix 1 of the permit. On May 20, 2026, Tennessee submitted an additional supplement to the June 18, 2025, submission. This supplement contains modifications to the contingency measure trigger language and CAA citation in the June 18, 2025, submission narrative and contains operating permit No. 082237 (Amendment #1), which modifies the contingency measure provision at Condition G4, corrects the numerical emission limit for the B-351-5 coal gasification flares at Condition S3-1, and updates the Monitoring Protocol in Appendix 3 to clarify the frequency of emission calculations.

Tennessee's June 18, 2025, submission relies on emission reduction control measures and enforceable emission limits for primary SO₂ emitting sources at Eastman (B-253, B-83, B-325, and B-248 and other process units discussed below) and nearby sources. The submission includes modeling that demonstrates the Sullivan County Area has attained and will maintain the SO₂ NAAQS through compliance with these multi-unit permit limits and control measures. The modeling demonstration included in the June 18, 2025, submission is the same modeling included in the February 9, 2023, nonattainment SIP submission. Additionally, the June 18, 2025, submission includes operating permit No. 082237, which includes emission limits, other control measures, and compliance parameters for the Eastman primary SO₂ sources first established in SIP operating permit No. 080222 (issued March 1, 2023) included in Tennessee's February 9, 2023, nonattainment SIP submission for the Sullivan County Area.³⁵

On December 11, 2025, the EPA approved the State's February 23, 2022, regional haze SIP for the second planning period and incorporated into Tennessee's SIP certain conditions from SIP operating permit No. 080222 and title V operating permit No. 576501

³⁵ SIP operating permit No. 080222 establishes SO₂ control measures and MRR parameters to demonstrate modeled attainment of the Sullivan County Area by the 2027 attainment date. See below.

³¹ See Table 1A, below, for a list of permanent and enforceable control measures incorporated into the SIP.

submitted with Tennessee's February 9, 2023, nonattainment SIP submission.^{36 37 38} Specifically, the EPA approved the following SO₂ control measures and compliance parameters for Eastman's coal-fired boilers B-83 and B-325 from SIP operating permit No. 080222 and title V operating permit No. 576501:

- *From permit No. 080222:* the portion of Condition 1 containing the 30-day rolling average SO₂ emission limit of 1,248 lb/hr for Eastman Boilers 18 through 24, 30, and 31; all of Condition 2; the portion of Condition 3 containing compliance parameters for the 1,248 lb/hr SO₂ limit; and Attachment A.

- *From permit No. 576501:* all of Conditions E3-8 and E3-9, which include the 317 lb/hr and 293 lb/hr individual SO₂ limits applicable to Boilers 30 and 31, respectively, at B-325; Condition E3-20; and Attachment 3.³⁹

These control measures, emission limits, and compliance parameters were established and/or incorporated into enforceable permits governed by Tennessee's federally enforceable permit regulations.⁴⁰ Below is a summary of the federally enforceable permits for emission sources at Eastman and Primerster that establish control measures responsible for improvement in air quality in the Sullivan County Area and support Tennessee's 2025 request to redesignate the area to attainment.

- Eastman SIP operating permit No. 080222⁴¹—Issued March 1, 2023, this permit established enforceable SO₂

emission limits (Condition 1), control measures (Conditions 2 and 4), and MRR parameters (Condition 3) for Eastman SO₂ emission sources B-83, B-235, B-248, B-334-1, B-351-5, and B-55-1, effective September 1, 2023. This permit was submitted with Tennessee's February 9, 2023, nonattainment SIP for the Sullivan County Area to demonstrate that the Area would attain the 2010 SO₂ standard by the April 5, 2027, attainment date based on modeling of the Eastman enforceable emission limits and control measures. As mentioned above, on December 11, 2025,⁴² the EPA incorporated into the Tennessee SIP portions of permit No. 080222 relating to those enforceable SO₂ limits and MRR parameters at the same time that it approved the State's regional haze SIP for the second planning period. See Table 1A, below, for the list of permit conditions previously incorporated into the SIP.

- Eastman title V operating permit 576501⁴³—Issued May 15, 2020, this permit requires Eastman to operate the two coal-fired boilers at B-325 (Boilers B-30 and B-31), in accordance with the individual emission limits and monitoring requirements established in Conditions E3-8 and E3-9. This title V permit incorporates the individual SO₂ emission limits from Eastman PSD permit 955272F.⁴⁴ As mentioned above, on December 11, 2025,⁴⁵ the EPA incorporated into the Tennessee SIP portions of permit No. 080222 at the same time that it approved the State's regional haze SIP for the second planning period. See Table 1A, below, for the list of permit conditions incorporated into the SIP.

- Eastman SIP operating permit No. 082237⁴⁶—Issued June 11, 2025, and submitted with Tennessee's June 18, 2025, submission, this permit adds periodic reporting requirements but contains the same SO₂ emission limits, control measures, and monitoring requirements from SIP operating permit

No. 080222 for boilers at B-83, B-325, B-55, B-351, B-334 and B-248, effective September 1, 2023, except for the coal gasification flare B-351-5. This permit also establishes general permit conditions for recordkeeping and contingency measures at Condition G2 and G4 and separate recordkeeping and reporting conditions for all Eastman boilers. This permit was submitted to support Tennessee's redesignation of the Sullivan County Area from nonattainment to attainment based on modeling that included these, among other, enforceable control measures and an attaining three-year design value for the period 2020–2022. A modification to SIP operating permit No. 082237,⁴⁷ referred to as 082237 (Amendment #1), was issued May 13, 2026, and submitted with Tennessee's May 20, 2026, supplement which corrects administrative errors and clarifies conditions for portions of the June 11, 2025, permit. Specifically, the modification corrects the SO₂ emission limit for the B-351-5 coal gasification flare from 16.28 lb/hr to 14.6 lb/hr at Condition S3-1 and updates the flare's Monitoring Protocol and compliance method at Appendix 3 to clarify that Eastman's Distributed Control System calculates the flare SO₂ emissions automatically each hour. This permit also corrects the primary trigger language and a CAA citation for the enforceable contingency measures at Condition G4. Finally, the supplement clarifies that the Monitoring Protocol for the B-248 HWIs at Condition S5-1 and Appendix 5 is superseded by the SIP permit No. 083740 (issued and effective January 14, 2026, and submitted with the January 27, 2026, supplement). Amendments to SIP permit No. 082237 became effective May 13, 2026, through SIP permit No. 082237 (Amendment #1). See Table 1B, below, for the list of permit conditions proposed for incorporation into the SIP.

- Eastman SIP operating permit No. 083740—Issued January 14, 2026, and submitted with Tennessee's January 27, 2026, supplement, this permit supersedes No. 082237 only for Eastman's HWIs B-248-1 and 248-2's Monitoring Protocol and compliance methodology at Appendix 1 of permit 083740 (corresponding to Appendix 5 of permit 082237). The SO₂ emission limits and reporting requirements for B-248-1 and 248-2 at Conditions S5-1 and S6-1, respectively, are unchanged from permit No. 082237 except to

³⁶ See 90 FR 57367 (Dec. 11, 2025).

³⁷ On December 20, 2024, Tennessee submitted a letter to EPA asking the Agency to incorporate certain existing SO₂ control measures from the permit for Eastman coal-fired Boilers 21, 22, 30 and 31 with the February 23, 2022, regional haze SIP to generally strengthen Tennessee's SIP as part of the Agency's approval of the regional haze SIP. See Document ID EPA-R04-OAR-2019-0308-0070 at www.regulations.gov.

³⁸ Tennessee's February 9, 2023, nonattainment SIP operating permit No. 080222 and the June 18, 2025, submission operating permit 082237, establish identical enforceable SO₂ control measures for Eastman sources, except in the case of the B-351-5 coal gasification flare as mentioned below. Thus, the numerical SO₂ emission limits, control measures, and MRR for Eastman's coal-fired boilers at Powerhouses B-83 and B-325 established in operating permit 082237 are permanent and enforceable through the approval of certain permit conditions from SIP operating permit No. 080222 with the February 23, 2022, regional haze SIP. See 90 FR 57367 (Dec. 11, 2025).

³⁹ See 90 FR 57367 (Dec. 11, 2025).

⁴⁰ See Tennessee Air Pollution Control Regulations (TAPCR) Chapter 1200-03-09 as SIP-approved at <https://www.epa.gov/air-quality-implementation-plans/tennessee-air-pollution-control-regulations-chapter-1200-3-9>.

⁴¹ A copy of SIP operating permit No. 080222 is included in the docket for this NPRM.

⁴² See 90 FR 57367 (Dec. 11, 2025) and Docket ID: EPA-R04-OAR-2019-0308.

⁴³ A copy of title V operating permit No. 576501 was submitted as part of Tennessee's December 20, 2024, supplemental letter, and is included in the docket for this NPRM. See *supra* Footnote 39.

⁴⁴ The EPA is not proposing to approve into the SIP the remaining SO₂ emission limits for Eastman units established in Eastman SIP Operating Permit No. 080222 as these limits and MRR parameters are included in Eastman SIP Operating Permit No. 082237 submitted with TDEC's June 18, 2025, redesignation, which supersedes SIP Operating Permit No. 080222.

⁴⁵ See 90 FR 57367 (Dec. 11, 2025) and Docket ID: EPA-R04-OAR-2019-0308.

⁴⁶ A copy of SIP operating permit No. 082337 is included in Attachment J1 of Tennessee's June 18, 2025, submission, which is included in the docket for this NPRM.

⁴⁷ The supplement SIP permit replaces the original permit No. 082237 issued June 11, 2025, and submitted with the June 18, 2025, redesignation request SIP submission.

reference Appendix 1 for the updated Monitoring Protocol. These modifications became effective January 14, 2026. See Table 1B, below, for the list of permit conditions proposed for incorporation into the SIP.

• Eastman PSD Construction permit No. 966859F—Issued June 5, 2013, and submitted as part of Tennessee’s June 18, 2025, submission, this permit authorized Eastman to repower the five B–253 coal-fired boilers to natural gas. Condition 6 of this permit states that on and after the startup date of each modified boiler in the B–253 fuel-

burning installation, only natural gas shall be used as fuel. Tennessee’s June 18, 2025, submission requests that the EPA incorporate Condition 6 into the SIP. See Table 1B, below.

• Primester title V operating permit No. 574994—Issued January 1, 2020, and submitted as part of Tennessee’s June 18, 2025, submission, this permit includes the SO₂ emission limit and compliance requirements for Primester’s Vent C—Cellulose Scrap Recovery Process, B–441–2 at Condition E5–1. The cellulose scrap recovery process is subject to an SO₂ limit of 1,000 parts per

million, 0.10 percent by volume, dry basis (one hour average), and 0.25 lbs/hr (three-hour average). Tennessee’s June 18, 2025, submission requests that the EPA incorporate Condition E5–1 into the SIP. See Table 1B, below.

The SO₂ emission limits, other control measures, and compliance parameters for Eastman’s B–83 and B–325 coal-fired boilers that are already incorporated into the SIP are listed in Table 1A, below. As mentioned above, the EPA incorporated these conditions from SIP operating permit No. 080222 and operating permit No. 576501.⁴⁸

TABLE 1A—PERMANENT AND ENFORCEABLE SO₂ CONTROL MEASURES FOR EASTMAN EMISSION SOURCES ALREADY APPROVED IN THE TENNESSEE SIP

Eastman emission source	SO ₂ emission limit or control measure	Permit	Condition
B–83, Boilers B–18 through B–24 and B–325, Boilers B–30 and B–31.	1,248 lb/hr; 30-day rolling average.	SIP Operating Permit No. 080222.	1, 3, Attachment A.
B–83, Boilers B–23 and B–24	Operation of Dry Sorbent Injection System.	SIP Operating Permit No. 080222.	2.
B–325, Boiler B–30	317 lb/hr; 30-calendar day rolling average.	Operating Permit No. 576501	E3–8, E3–20, Attachment 3.
B–325, Boiler B–31	293 lb/hr; 30-calendar day rolling average.	Operating Permit No. 576501	E3–9, E3–20, Attachment 3.

Summarized below are brief descriptions of each emission source in Table 1A. Further discussion for these SO₂ emission limits, other control measures, and compliance parameters may be found in section 4.0 of the June 18, 2025, submission.

1. *B–325 Powerhouse (Boilers B–30 and B–31) Individual limits:* Eastman’s B–325 powerhouse serves two coal-fired boilers—Boilers B–30 and B–31—that vent to a single stack. These boilers have a nominal heat input capacity of 780 Million British Thermal Units/hour (MMBtu/hr) (B–30) and 880 MMBtu/hr (B–31) and provide steam for facility operations. SO₂ emissions from these boilers are controlled by a spray dryer absorber⁴⁹ (SDA) for each boiler. Boiler B–30 is equipped with an electrostatic precipitator, and B–31 is equipped with a fabric filter to capture the dry, solid waste byproduct from the SDA chemical reaction. The boilers have individual SO₂ emission limits of 317 lbs/hr (B–30) and 293 lbs/hr (B–31) based on a 30-calendar day rolling average established

in Conditions E3–8 and E3–9 of title V operating permit No. 576501.⁵⁰

2. *B–83 Powerhouse Boilers B–23 and B–24 DSI System:* Eastman’s B–83 includes coal fired boilers B–23 and B–24, which provide steam and electricity for the facility and vent to stack C. In 2019, Eastman installed a portable Dry Sorbent Injection (DSI) system⁵¹ on Boilers B–23 and B–24 at the B–83 powerhouse in response to SO₂ exceedances at monitors in the Sullivan County Area. This control measure was installed to further reduce SO₂ emissions to address these monitored violations and ensure attainment of the standard. This installation occurred after the natural gas repowering and start-up of the last B–253 boiler—Boiler B–26—on October 4, 2018.

At that time, Eastman selected the portable DSI emission control because the B–253 boilers were well-controlled, Boilers B–18 through B–24 at the B–83 powerhouse were uncontrolled for SO₂, and because B–23 and B–24 are high pressure baseload boilers that are operated preferentially over Boilers B–18 through B–22, which are smaller and

operate at a lower pressure. Eastman subsequently installed and began operation of a permanent DSI system at B–23 and B–24 in November 2021, designed to reduce SO₂ emissions from the B–83 boilers as required to maintain and assure compliance with the B–83 and B–325 combined 30-day rolling average 1,248 lb/hr SO₂ emission limit established at Condition 1 of SIP permit No. 080222. The permanent DSI system was designed based on a nominal operating efficiency of 60 percent using sodium bicarbonate as the sorbent. Operation of the permanent DSI was made enforceable and effective on March 1, 2023, through SIP operating permit No. 080222, Condition 2.⁵²

3. *B–83 Powerhouse (Boilers B–18 through B–24) and B–325 Powerhouse (Boilers B–30 and B–31) Combined SO₂ Emission Limit:* TDEC used air dispersion modeling to establish a 1,248 lb/hr emission limit for all seven coal-fired boilers at B–83 (B–18 through B–24) and the two coal-fired boilers at B–325 (B–30 and B–31). The modeled values were converted to a single 30-day rolling average emission limit

⁴⁸ See 90 FR 57367 (Dec. 11, 2025).
⁴⁹ SDA is an air pollution control system that uses a mist of alkaline slurry such as lime sprayed into hot flue gas to remove acid gases such as SO₂, hydrochloric acid and particulates, creating dry, solid byproducts that are then captured by a baghouse or filter. This semi-dry process cools the gas, captures pollutants efficiently, and produces easily manageable solid waste.

⁵⁰ B–325 individual limits were initially authorized in PSD construction permit No. 955272F, Condition 4 on April 8, 2002, and incorporated by reference into the title V permit 576501.
⁵¹ DSI is a cost-effective air pollution control technology that injects powdered alkaline sorbents (like hydrated lime or Trona) into a flue gas stream to neutralize and remove acid gases (SO₂,

hydrochloric acid, sulfur trioxide) and heavy metals (mercury) before they exit smokestacks, using devices like bag filters or electrostatic precipitators to capture the reacted pollutants.
⁵² Authorization to operate the DSI system effective March 1, 2023, for B–83, B–23 and B–24 is also established in SIP permit No. 082237, Condition S1–2. See Attachment J1 of Tennessee’s on June 18, 2025, submission.

(combined total for all nine boilers) based on the EPA's longer term average policy established in the SO₂ Nonattainment Area Guidance.⁵³ For details on how Tennessee established the 30-day, combined SO₂ emission limit, *see* section V.C.1.b below and the EPA's Longer Term Average (LTA) Emission Limits Technical Support Document (TSD) (LTA TSD).⁵⁴ For reasons discussed in section V.C.1.b, below, and the EPA's LTA TSD, the EPA proposes to determine that appropriately set LTA limits provide a reasonable basis by which permit limits may provide for attainment of the 2010 SO₂ NAAQS. The combined limit and MRR compliance parameters were authorized in SIP operating permit No. 080222,⁵⁵ Conditions 1 and 3 and Attachment A. Condition 1 provides a table of affected Eastman emission sources and the SO₂ emission limits including the 1,248 lb/hr combined limit for B-83 and B-325. Condition 3 establishes the compliance parameters in Attachment A of which were incorporated by reference as enforceable conditions.⁵⁶

The coal-fired boilers at B-83 and B-325 are equipped with SO₂ Continuous Emission Monitoring Systems (CEMS), but emissions from the larger boilers (B-23, 24, 30, and 31) are calculated differently than the older B-83, B-18 through B-22 boilers. Boilers 23, 24, 30, and 31 are subject to the Nitrogen Oxide SIP Call ozone season program pursuant to 40 CFR part 75 and, therefore, are required to install and operate in-stack flow monitors. Thus, hourly SO₂

emissions from these four boilers are calculated based on the SO₂ CEMS data and flow monitoring.⁵⁷

Boilers B-18 through B-22, however, are not equipped with flow monitors, thus SO₂ emissions are calculated in lb/MMBtu using CEMS data and calculated heat input (from the energy rise of steam across the boilers) in accordance with 40 CFR 60 appendix A, Method 19. All 30-day rolling averages must be calculated as specified in 40 CFR part 63, subpart UUUUU at 63.10021(b), Equation 8) (which is presented as Equation 4-1 in the June 18, 2025, submission), which utilizes the hourly emissions rate for a given hour (combined total emissions for all boilers) and the number of hourly emissions rate values collected over 30 boiler operating days.⁵⁸ Attachment A of SIP operating permit No. 080222 requires each CEMS to be fully operational for at least 95 percent of the operational time of the monitored boiler during any calendar quarter, and missing data must be addressed by substituting the higher value of: (1) the last valid hourly emission rate before, or (2) the first valid hourly emission rate after, the period of missing data.

For the reasons noted above and as discussed further in the LTA TSD, the EPA is proposing to find that the 30-day rolling average combined SO₂ emission limit for the coal-fired boilers at B-83 (B-18 through B-24) and B-325 (B-30 and B-31) is comparably stringent to a 1-hour limit and provides for modeled attainment of the SO₂ standard in the Sullivan County Area. As mentioned

above, the combined 30-day rolling average 1,248 lb/hr SO₂ emission limit for B-83 and B-325 and the DSI control operations at B-83, Boilers B-23 and B-24, established in SIP operating permit No. 080222 and the B-325 individual 317 lb/hr and 293 lb/hr SO₂ limits for Boilers B-30 and B-31, respectively, established at Conditions E3-8 and E3-9 of title V operating permit No. 576501 were made permanent through incorporation into the Tennessee SIP on December 11, 2025.⁵⁹

The EPA is proposing to incorporate into the SIP the remaining SO₂ emission limits and other control measures requested for approval in the State's June 18, 2025, submission that were not made permanent in the EPA's December 11, 2025, action. Tennessee requests that the EPA approve into Tennessee's SIP the remaining SO₂ control measures from SIP operating permit No. 082237, which are modified in Tennessee's January 27, 2026, SIP operating permit No. 083740 and May 20, 2026, SIP operating permit No. 082237—(Amendment #1).⁶⁰ These remaining SO₂ control measures apply to the following Eastman emission sources: B-253 coal-fired units, B-248 hazardous waste incinerators, B-351-5 coal gasification flare, B-334 tail gas incinerator, and B-55-1 organic acids and anhydrides manufacturing, and Primester B-441 cellulose recovery scrap process. Table 1B, below, lists the enforceable SO₂ emission limits, other control measures, and compliance parameters for these remaining emission sources.⁶¹

TABLE 1B—SULLIVAN COUNTY AREA ENFORCEABLE SO₂ CONTROL MEASURES PROPOSED FOR INCORPORATION INTO THE TENNESSEE SIP

Emission source	SO ₂ emission limit or other control measure	Permit	Condition(s)
Eastman B-253-1; Boilers B-25 through B-29.	Only natural gas shall be used as fuel.	PSD Construction Permit 966859F.	6.
Eastman B-334-1; Incinerator for Acid Gas Removal and Sulfur Recovery Plant.	21.8 lb/hr; 24-hour block average.	SIP Operating Permit 082237 (Amendment #1).	* S2-1 and S2-2, Appendix 2.

⁵³ See *Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions*; EPA, April 23, 2014, (SO₂ Nonattainment Area Guidance), which can be found at <https://www.epa.gov/so2-pollution/guidance-1-hour-sulfur-dioxide-so2-nonattainment-area-state-implementation-plans-sip> (2014) at pp. 22–39 and Appendices B, C, and D, available in the docket for this action.

⁵⁴ The EPA's LTA TSD is included in the docket for this NPRM.

⁵⁵ SIP operating permit No. 080222 is a federally enforceable State operating permit issued on March 1, 2023, by TDEC establishing enforceable SO₂ emission limits and control measures for Eastman as part of Tennessee's February 23, 2023, nonattainment SIP for the Sullivan County Area. The permit is included in the docket for this NPRM.

⁵⁶ The combined SO₂ emission limit for B-83 and B-325 is established in SIP operating permit No. 082237, which is included in Tennessee's June 18, 2025, submission.

⁵⁷ The B-325 individual boilers are equipped with SO₂ CEMS and flow monitoring system (operated and maintained in accordance with 40 CFR part 60 appendix B Performance Specification 6 or 40 CFR part 75 appendix A) with an automated data acquisition and handling system for measuring and recording SO₂ concentration (in parts per million), volumetric gas flow (in standard cubic feet per hour), and SO₂ mass emissions (in lb/hr) discharged to the atmosphere. Compliance with the individual limits is determined by calculating hourly SO₂ emissions from the CEMS data and flow monitoring established in Condition E3-20, Attachment 3 of the SIP operating permit.

⁵⁸ Boiler operating day means a 24-hour period that begins at midnight and ends the following midnight during which any fuel is combusted at any time in any of the boilers. It is not necessary for the fuel to be combusted the entire 24-hour period.

⁵⁹ See 90 FR 57367 (Dec. 11, 2025).

⁶⁰ Conditions from SIP operating permit No. 083740 and SIP operating permit No. 082237 (Amendment #1) will be incorporated into the SIP. These permits contain the most up-to-date version of all of the requirements included in SIP operating permit 082237.

⁶¹ See the May 20, 2026, supplement, Attachment C version of Table 4-4 and Attachment J of Tennessee's June 18, 2025, submission.

TABLE 1B—SULLIVAN COUNTY AREA ENFORCEABLE SO₂ CONTROL MEASURES PROPOSED FOR INCORPORATION INTO THE TENNESSEE SIP—Continued

Emission source	SO ₂ emission limit or other control measure	Permit	Condition(s)
Eastman B-55-1	6.74 lb/hr	SIP Operating Permit 082237 (Amendment #1).	*S4-1 and S4-2.
Eastman B-248-1; Solid/Liquid Chemical Waste Incinerators.	15.2 lb/hr; 30-day average, combined limit for both rotary kilns.	SIP Operating Permit 083740 **	*S5-1 and S5-2, Appendix 1.
Eastman B-248-2; Liquid Chemical Waste.	2.0 lb/hr; 30-day average	SIP Operating Permit 083740 **	*S6-1 and S6-2, Appendix 1.
Eastman B-351-5; Coal Gasification Cold and Warm Flares.	14.6 lb/hr; 30-day rolling average.	SIP Operating *** Permit 082237 (Amendment #1).	S3-1(B), S3-2, S3-3, Appendix 3.
Primester, B-441-2, Vent C	1,000 ppm by volume (dry basis), 1-hour average and 0.25 pounds per hour, 3-hour average.	Title V Operating Permit 574994	E5-1.

* For Eastman SIP operating permits Nos. 082237 (Amendment #1) and 083740, Conditions S2-1, S3-1(B), S4-1, S5-1, and S6-1 represent the numerical SO₂ emission limit/averaging time or control measure and compliance monitoring; Conditions S2-2, S3-2, S4-2, S5-2, and S6-2 represent the recordkeeping and reporting compliance requirements. TDEC also requests that general permit conditions G2, G3, and G4 be adopted into the SIP for both permits Nos. 082237 (Amendment #1) and 083740.

** Permit No. 083740 modifies the parametric monitoring for Eastman B-248-1 and 248-2 HWI and supersedes permit No. 082237 effective January 14, 2026.

*** Permit No. 082237 (Amendment #1) effective May 13, 2026, corrects the 16.28 lb/hr limit to 14.6 lb/hr and clarifies the frequency by which SO₂ emissions for the B-351 coal gasification flare are automatically calculated. The permit also updates Condition G4 contingency measures.

A brief description of each emission source in Table 1B is summarized below. For a more detailed discussion of each SO₂ emitting unit at Eastman and Primester addressed in Table 1B, please see section 4.0 of the June 18, 2025, submission including the updated Table 4-4 submitted with TDEC's May 20, 2026, supplement.

4. *B-253 (Boilers B-25 through B-29)*: From 2014 to 2018, Eastman converted Boilers B-25 through B-29 from coal-fired boilers to natural gas-fired boilers. The EPA approved this conversion as an alternative to best available retrofit technology (BART) for SO₂ for the B-253 Powerhouse during the first regional haze planning period.⁶²

Condition 6 of PSD permit No. 966859F established a natural gas fuel restriction for all five B-253-boilers once repowering was installed and operational.⁶³ Compliance with the fuel

usage restriction is based on the design and construction of the boilers, which include natural gas feed lines and burners that physically restrict the source's ability to burn other fuels. The start-up date for the first repowered boiler was April 23, 2014, and the start-up date for the last repowered boiler was October 4, 2018. Tennessee's February 9, 2023, and June 18, 2025, submissions request that the EPA incorporate into the SIP the natural gas fuel usage restriction at Condition 6 of PSD permit No. 966859F for Boilers B-25 through B-29. The EPA is proposing to approve this fuel restriction to support Tennessee's redesignation request showing that attainment of the 2010 SO₂ standard in the Sullivan County Area is due to permanent and enforceable SO₂ control measures.

5. *Solid/Liquid Chemical Waste Incinerators (PES B-248-1: Vents D and E) and Liquid Chemical Waste Incinerator (PES B-248-2: Vent A)*: The B-248 incinerator complex consists of three HWIs, one liquid chemical waste incinerator (B-248-2, Vent A), and two rotary kilns that can burn solid or liquid chemical waste (B-248-1, Vents D and E). These units incinerate solid and liquid waste from other processes at Eastman and are subject to enforceable SO₂ emission limits of 15.2 lb/hr (B-248-1) and 2.0 lb/hr (B-248-2). SO₂ emissions from these units are continuously controlled by wet scrubbers (Croll-Reynolds Clean Air Technologies multi-rod scrubber for each emission point). These emission

limits were first made enforceable through SIP operating permit No. 080222 submitted with the February 9, 2023, submission. This permit was superseded by SIP operating permit No. 082237 submitted with the June 18, 2025, submission, and again superseded by operating permit No. 083740 submitted with the January 27, 2026, supplement.⁶⁴ Conditions S5-1 and S5-2 establish the 15.2 lb/hr combined SO₂ limit for the B-248-1 chemical waste incinerators rotary kilns. Conditions S6-1 and S6-2 establish the 2.0 lb/hr SO₂ emission limit for B-248-2 liquid chemical waste incinerators.

These two incinerators are not equipped with CEMS. In lieu of CEMS, compliance with the SO₂ emission limits is based on continuous calculations of SO₂ emissions using parametric monitoring of the sulfur feed rate and the pH of the rod scrubber underflow. Computer simulations using Aspen Plus, a commercially available software package, were conducted to establish the pH of the rod scrubber underflow at varying sulfur loading conditions, and the correlation curve for the highest sulfur feed modeled was used to develop the relationship between pH and removal efficiency. All removal efficiencies were determined using the minimum liquid to gas flow rate ratio (L/G ratio) determined during the most recent Comprehensive Performance Test (CPT), as required by 40 CFR part 63, subpart EEE, for each unit.

⁶² TDEC's original April 4, 2008, regional haze SIP identified the B-253 Powerhouse as a BART-eligible unit. Tennessee subsequently amended its regional haze SIP (on May 14, 2012, and May 25, 2012) to establish BART requirements for Eastman including an alternative BART option to repower (convert coal-fired boilers to natural gas) Boilers 25-29 by December 31, 2018. Tennessee adopted requirements on May 9, 2012, to establish BART for B-253, Boilers B-25 through B-29 during the first regional haze implementation period. See 77 FR 24392 (Apr. 24, 2012) and 77 FR 70689 (Nov. 27, 2012). The BART alternative became federally enforceable through the issuance of BART permit No. 066116H (Condition 4(f)) on May 9, 2012, and amended on May 22, 2012, which changed the conversion completion date to align with the 1-hour SO₂ NAAQS compliance deadline of October 4, 2018.

⁶³ All five B-253 boilers were converted to natural gas from 2014 to 2018. See Table 4-1 in Tennessee's February 9, 2023, submission and Table 4-2 in Tennessee's June 18, 2025, submission

for specific natural gas commercial operation for each boiler.

⁶⁴ See TDEC's August 25, 2026, email to the EPA Regional Administrator Kevin McOmber in the docket for this action.

Appendix 1 to permit No. 083740 includes the parametric monitoring requirements for units PES B-248-1 and PES B-248-2. This includes the continuous monitoring of rod scrubber underflow pH via a pH sensor and transmitter installed in either the rod scrubber underflow line or the sump pump. The L/G ratio is calculated from two directly measured parameters: the stack gas flow rate (which is measured in the ductwork between the final control device, the wet electrostatic precipitator, and the induced draft fan located at the stack inlet) and the scrubbing liquid flow rate (which is measured by liquid flow meters located between each heat exchanger and the rod scrubber spray). If the L/G ratio drops below the minimum value set by the most recent CPT, the SO₂ removal efficiency shall be assumed to be zero for the purposes of estimating emissions and determining compliance. See “Description of Monitoring Protocol,” in Appendix 1 of permit No. 083740 in the January 27, 2026, supplement.

TDEC issued permit No. 083740 on January 14, 2026, to update the Monitoring Protocol for the hazardous waste incinerators. The parametric Monitoring Protocol requires Eastman to base the parametric relationship on the most recently modeled simulations determining the correlation between the scrubber pH and SO₂ removal efficiency for the multi-rod scrubbers. If a comprehensive performance test is conducted in accordance with 40 CFR part 63, subpart EEE after May 1, 2025, the results of that test may be used to determine the SO₂ removal rate until a change in the sulfur feed rate makes the test result unrepresentative of current conditions or until a subsequent modeled simulation is performed. Additionally, the Monitoring Protocol requires that when the L/G ratio drops below the minimum value set by the most recent comprehensive performance test, then the SO₂ removal efficiency shall be assumed to be zero.

Items 2 and 5 in the Description of Monitoring Protocol section establish the process for determining the parametric values which are used to calculate SO₂ emissions. Outlining the applicable methodology will ensure that the most accurate data is used to determine SO₂ emissions without delay. If a change to the method used to set the minimum L/G ratio or pH/SO₂ removal efficiency correlation curve or to the method used to calculate SO₂ emissions from the hazardous waste incinerators is required, TDEC must submit a SIP revision to the EPA for consideration. Additionally, any changes to the underlying SO₂ emission rate cannot

occur without the EPA approval of a SIP revision. The Monitoring Protocol does not include operational limits that would be updated such that it would impact compliance with the modeled SO₂ limit.

While SO₂ removal efficiencies may be established through performance testing, SO₂ emissions from the hazardous waste incinerators are minimal and expected to remain low because of the sale of Eastman's resin business, and therefore, Eastman is unlikely to have sulfur feed in sufficient quantity to provide valid test results.

Tennessee's June 18, 2025, submission requests that the EPA approve as a permanent and enforceable control measure into the SIP the SO₂ emission limits for B-248-1 and B-248-2 established in SIP operating permit No. 082237, Conditions S5-1, S5-2, S6-1 and S6-2, respectively.⁶⁵ The EPA is proposing to adopt into the Tennessee SIP, SO₂ emission limits for B-248-1 and B-248-2 as permanent and enforceable control measures. Additionally, the EPA is proposing to approve the Monitoring Protocol in Appendix 1 used to calculate SO₂ emissions and determine compliance with B-248 emission limits through SIP operating permit No. 083740 submitted as part of Tennessee's January 27, 2026, supplement.

6. Coal Gasification Cold and Warm Flares (B-351-5): These flares are subject to a combined 14.6 lb/hr, 30-day rolling average SO₂ emission limit. Tennessee used air dispersion modeling to establish this emission limit based on the EPA's LTA policy in the SO₂ Nonattainment Area Guidance. For details on how Tennessee established the 30-day, combined SO₂ emission limit, see section V.C.1.b below and the EPA's LTA TSD. Initially, TDEC established a 16.28 lb/hr emission limit in SIP operating permit No. 080222, included with the February 9, 2023, submission. The updated emission limit is enforceable through SIP operating permit No. 082237 (Amendment #1)⁶⁶ as issued on May 13, 2026.⁶⁷

⁶⁵ As discussed above, operating permit No. 083740 supersedes operating permit No. 082237 for the HWIs.

⁶⁶ The B-351 emission limit included in SIP operating permit No. 082237 is incorrect. Tennessee corrected the permit limit from 16.28 lb/hr to 14.6 lb/hr in its May 20, 2026, supplement.

⁶⁷ Tennessee's May 20, 2026, supplement notes that the inclusion of the 16.28 lb/hr limit in the final permit for 082237 was an error, leading to the need to issue 082237 (Amendment #1). Tennessee clarifies in its August 20, 2026, letter to the EPA Regional Administrator Kevin McOmber that with the submission of the May 20, 2026, supplement, the State is not asking for the EPA to take action on the 16.28 lb/hr limit, and that it is included in permit 082237 (Amendment #1) for informational

The cold and warm flares are each equipped with three High Energy Ignition/High Btu flare pilots. These flares have “flame on” and temperature indicators to ensure reliable combustion. In lieu of CEMS, compliance with the SO₂ emission limit is based on parametric monitoring of the control valve position and control valve upstream pressure. Eastman is required to continuously track the control valve opening position and upstream pressure each hour (at least once every 15 minutes). These parameters are used to calculate the volumetric flow rate of the gas stream routed to the flares. The known plant gas stream composition is also used to calculate the sulfur content of the gas stream routed to the flares (assuming a total conversion of sulfur to SO₂ when calculating emissions). Tennessee's June 18, 2025, submission requests the EPA incorporate into the SIP as a permanent and enforceable control measure the enforceable SO₂ emission limit for B-351-5 established in the May 13, 2026, version of SIP operating permit No. 082237 (Amendment #1), Condition S3-1(B) along with compliance method (A) (including Appendix 3 which contains the Monitoring Protocol), and the recordkeeping and reporting requirements at Condition S3-2.

7. Incinerator for Acid Gas Removal and Sulfur Recovery Plant (or Tail Gas B-334-1): Eastman's tail gas incinerator oxidizes residual sulfur compounds such as hydrogen sulfide (H₂S) left over from the combustion of the gas stream. The emission unit is subject to an SO₂ emission limit of 21.8 lb/hr (24-hour block average), first made enforceable through SIP operating permit No. 080222 submitted with the February 9, 2023, submission and subsequently included in SIP operating permit No. 082237 (Amendment #1) at Condition S2-1 and the Monitoring Protocol and periodic reporting requirements at Appendix 2 and Condition S2-2, submitted in the June 25, 2025, submission, as amended in the May 20, 2026, supplement. The tail gas incinerator is equipped with a direct flame afterburner. Compliance with the SO₂ emission limit is based on continuous (at least once every 15 minutes) parametric monitoring of the H₂S and gas flow rate of the tail gas to calculate the emission rate in lb/hr for a 24-hour block average. The EPA is proposing to incorporate into the SIP as a permanent and enforceable control measure the SO₂ emission limit for B-

purposes only. Both emission limits apply to the flare, and only the 14.6 lb/hr limit is requested for incorporation into the SIP.

334–1 established in SIP operating permit No. 082237 (Amendment #1) at Condition S2–1, the periodic reporting requirements at Condition S2–2, and the Monitoring Protocol at Appendix 2.

8. *B–55–1, Organic Acids & Anhydrides Manufacturing, Vents B, C, E, I, and K*: Tennessee has established a 6.74 lb/hr SO₂ emission limit for B–55–1 effective March 8, 2026, at Condition S4–1 of SIP operating permit No. 082237 (Amendment #1), with associated reporting requirements at Condition S4–2. To assess the need for temporary SO₂ emission controls on the batch reactors and/or sludge handling belt to meet this limit under maximum operating conditions, Eastman was required to conduct an initial performance test to determine the amount of SO₂ emitted from this source no later than June 6, 2026, in accordance with the methods and procedures specified in 40 CFR part 60 appendix A. As Vent E was not in service at the issuance date of Permit 082237 or 082237 (Amendment #1), condition S4–1 requires an initial performance test be conducted no later than 180 days following any restart of the associated process.

On October 10, 2025, TDEC accepted the test reports for B–55–1 Vent K, with testing done June 02, 2025, and B–55–1 Vents C and I, with testing done May 08 through June 09, 2025. On April 1, 2026, TDEC accepted the test report for B–55–1 Vent B summarizing testing completed February 20 through 23, 2026. The EPA is proposing to incorporate into the SIP as a permanent and enforceable control measure the SO₂ emission limit for B–55–1 established in SIP operating permit No. 082237 (Amendment #1) Conditions S4–1 and the periodic reporting requirements at Condition S4–2.

9. *Primester (B–441–2: Vent C)—Cellulose Scrap Recovery Process*: This source rejects dope from various points in the acetylation operation to recover cellulose sludge for reuse at the plant. Emissions are controlled by a scrubber using a water solution with caustic added. The cellulose scrap recovery process is subject to SO₂ limits of 1,000 parts per million, 0.10 percent by volume, dry basis (one hour average) and 0.25 lbs/hr (three-hour average).

In lieu of CEMS, compliance with the SO₂ emission limits is based on parametric monitoring of the scrubber flow rate and scrubber underflow pH. Per Condition E5–1 of title V permit No. 574994, the scrubber flow rate and pH shall be continuously monitored and recorded. Primester is required to maintain a minimum scrubber flow rate and a minimum scrubber pH, for which

both minimum parametric values are included in the compliance method of condition E5–1 of title V permit No. 574994, to assure compliance with the SO₂ limits. Any updates to these minimum parametric values would require the EPA approval of a SIP revision. The EPA is proposing to incorporate into the SIP Condition E5–1 of title V operating permit No. 574994 as a permanent and enforceable measure.

B. Nonattainment Planning Requirements

1. Clean Air Act Requirements

Subpart 1 of part D, comprised of CAA sections 171–179B, sets forth the basic nonattainment requirements applicable to all nonattainment areas. CAA Section 172(c) sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to CAA section 172(b). All areas that were designated nonattainment for the 2010 1-hour SO₂ NAAQS were designated under CAA subpart 1 in accordance with the deadlines in subpart 5. A thorough discussion of the requirements contained in CAA section 172(c) can be found in the General Preamble for Implementation of Title I.⁶⁸

CAA section 172 requires States with nonattainment areas to submit plans providing for timely attainment and meeting a variety of other requirements. Tennessee has satisfied the part D obligation to submit attainment planning requirements for the Sullivan County Area through the State's May 12, 2017, and February 9, 2023, nonattainment SIP submissions and resubmission of RACM/RACT in the June 18, 2025, redesignation request and maintenance plan submission. See section II of this NPRM. The February 9, 2023, nonattainment SIP included a modeled demonstration of attainment for the 2010 SO₂ NAAQS by the April 5, 2027, attainment date. The EPA addresses how Tennessee satisfied each CAA section 172(c) element below.

CAA Sections 172(a)(2), 192(a), and 179(d)—Attainment Dates for Nonattainment Areas: For a nonattainment area, CAA section 172(a)(2) establishes that the attainment date shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the date the area was designated nonattainment, unless the Administrator determines an extension of up to 10 years is appropriate. CAA section 192(a)

requires that SIPs for nonattainment areas must provide for attainment of the relevant NAAQS as expeditiously as practicable, but no later than five years from the effective date of the nonattainment designation. The effective date of the designation of the Sullivan County Area to nonattainment was October 4, 2013,⁶⁹ and five years from that date was October 4, 2018. As detailed in section II of this NPRM, Tennessee initially submitted its first nonattainment SIP on October 12, 2017, which included a modeled attainment demonstration. Subsequently, on April 5, 2022, the EPA published a FFA determining that the State failed to attain by the applicable attainment date, triggering a requirement under CAA section 179(d) for Tennessee to submit to the EPA a revised nonattainment SIP for the Sullivan County Area within one year of the publication of the FFA **Federal Register** (*i.e.*, April 5, 2023), which provides for attainment of the 2010 SO₂ standard as expeditiously as practicable, but no later than five years from the FFA's **Federal Register** publication date (*i.e.*, April 5, 2027).

The EPA previously determined that the State did not meet its obligation to provide for attainment within five years of the nonattainment designation. The EPA proposes to find that TDEC met its obligation to provide its revised nonattainment planning SIP through the February 9, 2023, second nonattainment SIP and that the State appropriately developed its modeled attainment demonstration, as discussed in section V.C.1.b. The EPA is also proposing that the nonattainment SIP ensured attainment of the 2010 SO₂ NAAQS as expeditiously as practicable and earlier than the April 5, 2027, date as evidenced by TDEC submitting its redesignation request and maintenance plan by June 18, 2025, with the same modeling demonstration used for attainment supporting its maintenance demonstration. In section V.C.1.a of this NPRM, the EPA also examines the actual monitored SO₂ concentrations in Table 2, below, and notes that with 2020–2022 design values, all monitors in the Area were in attainment and have remained in attainment through 2023–2025. Moreover, Table 3, below, shows that the annual 99th percentile daily maximum 1-hour SO₂ concentration has remained below the standard at all four monitors since 2022. If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area but analyses show that none of the monitors are in the area of maximum concentration, then air

⁶⁸ See CAA section 107(d)(3)(E)(iv).

⁶⁹ See 78 FR 47191 (Aug. 5, 2013).

quality dispersion modeling will generally be needed to estimate SO₂ concentrations in the area. The monitoring information, taken together with the air quality modeling, ensures that the area attained by the submission of the State's June 18, 2025, redesignation request and maintenance plan, slightly more than two years after publication of the FFA and over 21 months ahead of the CAA section 179(d) attainment date.

CAA Sections 172(b), 191(a), and 179(d)—Schedule for Plan Submission: Under CAA section 172(b) and consistent with CAA section 191(a), the Administrator required Tennessee to submit a SIP revision for the Sullivan County Nonattainment Area within 18 months of the October 4, 2013, effective date of the nonattainment redesignation. As noted in section II of this NPRM, on March 18, 2016, the EPA published a FFS pursuant to CAA section 110(k)(1)(B), finding that Tennessee had failed to submit the SO₂ nonattainment SIP by the submission deadline of April 4, 2015.⁷⁰ TDEC submitted its first nonattainment plan on May 12, 2017. Subsequently, with the publication of the FFA on April 5, 2022, the Administrator required Tennessee to submit a SIP revision within one year of the publication (*i.e.*, April 5, 2023), pursuant to CAA section 179(d). The EPA proposes to find that TDEC met this requirement by submitting its SIP revision on February 9, 2023, which was sooner than one year from when the FFA published.

CAA Section 172(c)(1)—Subpart 1 RACM/RACT Requirements: Subpart 1 requires that each attainment plan “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.”⁷¹ The EPA has consistently interpreted this provision to require only implementation of potential RACM that could advance attainment.⁷² Thus, when an area is already attaining the standard, no additional RACM measures are required. The EPA's interpretation that Subpart 1 requires only the implementation of RACM measures that would advance attainment was upheld

by the United States Court of Appeals for the Fifth Circuit⁷³ and by the United States Court of Appeals for the D.C. Circuit.⁷⁴ In its June 18, 2025, submission, Tennessee determined that no additional control measures are necessary in the Sullivan County Area to satisfy the CAA section 172(c)(1) RACM requirement beyond those measures that provide for attainment of the 1-hour SO₂ NAAQS.

The EPA is proposing to determine that Tennessee's Subpart 1 RACM determination is approvable on the basis that no additional reasonably available controls would have advanced the April 5, 2027, statutory attainment date. Tennessee's plan for attaining the 1-hour SO₂ NAAQS in the Sullivan County Area is based on several measures, as mentioned above, including repowering the B-253 boilers from coal to natural gas operation, which was completed October 4, 2018, as an alternative to SO₂ BART for Eastman. The BART alternative became federally enforceable with the issuance of BART permit 066116H on May 9, 2012. Condition 4(f) of permit 066116H requires the repowering of B-253 to be completed no later than the compliance deadline for the 1-hour SO₂ NAAQS.

As discussed above, the EPA is proposing to incorporate into the SIP Condition 6 of PSD construction permit 966859F, which states that on and after the startup date of each modified boiler in the B-253 fuel-burning installation, only natural gas shall be used as fuel. Also, Tennessee evaluated B-325 Boiler 31 and determined that the SDA/fabric filter baghouse combination already in place constitutes RACT, and therefore, that no further analysis is required. Tennessee considered a range of measures to reduce SO₂ emissions for the remaining B-83 and B-325 boilers including switching to low-sulfur coal, upgrading or adding new control equipment, converting existing coal-fired boilers to natural gas, and replacing existing coal-fired boilers with natural gas boilers. Tennessee determined that these other measures are not reasonable for a variety of reasons, including infeasibility and cost, and that they were not needed to attain the NAAQS and would not advance the attainment date.⁷⁵ In addition, Tennessee evaluated other operations at

Eastman as well as additional sources within and adjacent to the Area and determined that no additional controls were required as RACT.

Tennessee has determined that existing emission limits also constitute RACT, and the EPA proposes to concur with the State's RACT analysis, initially submitted in the February 9, 2023, submission and subsequently included in the June 18, 2025, submission. Based on air dispersion modeling of the repowering of Eastman's powerhouse,⁷⁶ the installation of add-on controls for Eastman's B-83 boilers B-23 and B-24, the adoption of a combined emission limit for Eastman's B-83 and B-325 powerhouses, and the adoption of existing emission limits into the SIP for other SO₂ emitting sources at Eastman and Primester, Tennessee determined that no additional measures are necessary for attainment and no potential measures which, if considered collectively, would advance the April 5, 2027, attainment year by one year or more.⁷⁷ The EPA notes that the Area first started monitoring attainment of the 2010 SO₂ NAAQS with a 2018–2020 design value and continues to attain the standard. Therefore, the EPA proposes to approve Tennessee's determination that the State has satisfied its RACM obligations under CAA section 172(c)(1).

CAA Section 172(c)(2)—RFP: CAA section 172(c)(2) states that nonattainment plans must require RFP. RFP is defined in CAA section 171(1) as “such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date.”

In the SO₂ Nonattainment Area Guidance, the EPA notes that the definition at CAA section 171(1) is “most appropriate for pollutants that are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventory-wide.”⁷⁸ The Guidance

⁷⁶ See section V.C.1.b of this NPRM for discussion of the air dispersion modeling.

⁷⁷ Reviewing courts have upheld EPA's interpretation of RACM as encompassing only those measures necessary to advance attainment. See *Sierra Club v. EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002); *Sierra Club v. EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002); *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009).

⁷⁸ See *SO₂ Nonattainment Area Guidance* at p. 40. The document is available in the docket for this action.

⁷⁰ See 81 FR 14736.

⁷¹ See CAA section 172(c)(1).

⁷² See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002).

⁷³ *Sierra Club v. EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002).

⁷⁴ *Sierra Club v. EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002); *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009).

⁷⁵ See Section 5 of Tennessee's February 9, 2023, submission and Section 4 of Tennessee's submission for additional details on the measures analyzed.

explains that “the definition is generally less pertinent to pollutants like SO₂ that usually have a limited number of sources affecting areas of air quality which are relatively well defined, and emissions control measures for such sources result in swift and dramatic improvement in air quality.”⁷⁹ As a result, the Guidance goes on to note that in the 1992 General Preamble, the EPA explained that RFP for SO₂ is best construed as “adherence to an ambitious compliance schedule.”⁸⁰

While the EPA expects that RFP for SO₂ nonattainment areas should yield significant emission reductions under an ambitious compliance schedule, the Sullivan County Area has already achieved significant permanent and enforceable reductions in SO₂ emissions, such as the reduction of SO₂ emissions from 2011 to 2022 from coal-fired boilers at Eastman from 21,859 tons to 3,334 tons.⁸¹ These reductions have led to sustained monitored ambient SO₂ concentrations below the 2010 1-hour SO₂ NAAQS substantially earlier than the applicable attainment date, as demonstrated in Table 2. As stated above, TDEC determined, and the EPA agrees, that no RACM exists that would advance the attainment date for the Area. With the emission reductions already achieved resulting in sustained ambient SO₂ concentrations below the 2010 1-hour SO₂ NAAQS, the EPA is proposing to find that RFP has already been made and that Tennessee’s second nonattainment SIP has met the RFP provisions of CAA section 172(c)(2).

CAA Section 172(c)(3)—Emissions Inventory: CAA section 172(c)(3) requires nonattainment plans to include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area. As noted in section II of this NPRM, the EPA approved Tennessee’s 2011 base year emission inventory for the Sullivan County Area March 1, 2021,⁸² as satisfying the requirements of CAA section 172(c)(3).⁸³

CAA Section 172(c)(4) and 172(c)(5)—Identification and Quantification of Emissions and Nonattainment New Source Review Permits: CAA section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and CAA section 172(c)(5) requires source

permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Tennessee currently has a SIP-approved part D NNSR permitting program in place in Chapter 1200–03–09 of the Tennessee Air Pollution Control Regulations (TAPCR). As mentioned above, on March 1, 2021, the EPA determined that Tennessee’s SIP-approved NNSR program satisfies the requirements of section 172(c)(5) of the CAA for the Sullivan County Area.⁸⁴

Furthermore, Tennessee’s air quality modeling, submitted initially in the February 9, 2023, second nonattainment plan and resubmitted in the June 18, 2025, submittal, accounts for known expected growth within the Area that consists of the construction and startup of three new natural gas boilers (0.64 tons per year, each) and a methanolysis plant (0.43 tons per year), each of which is modeled at their potential to emit (PTE). Tennessee has met CAA section 172(c)(4) and 172(c)(5) requirements. The EPA is further proposing that the use of the future PTE for the natural gas boilers and the methanolysis plant’s natural gas-fired furnace in the modeling also meets CAA section 172(c)(4).

CAA Section 172(c)(6)—Other Measures: CAA section 172(c)(6) requires each nonattainment plan to include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance as necessary to provide for attainment by the applicable attainment date. The requirements under CAA section 172(c)(6) for nonattainment plans are similar to those under CAA section 110(a)(2)(A) for infrastructure SIPs, which the EPA previously approved for Tennessee.⁸⁵ However, in the EPA’s action approving Tennessee’s infrastructure SIP as satisfying CAA section 110(a)(2)(A) for the 2010 1-hour SO₂ NAAQS, the EPA explained that for nonattainment plans, “Emissions limitations and other control measures, whether on coal-fired EGUs or other SO₂ sources, that may be needed to attain and maintain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure SIP submission. A state, like Tennessee, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission for

purposes of section 110(a)(2)(A).”⁸⁶ In its February 9, 2023, second nonattainment plan, TDEC notes that compliance dates for control measures in the attainment demonstration must be as expeditious as practicable, and attainment plans should require sources to comply with the requirements of the attainment strategy at least one calendar year before the attainment date. SIPs should be able to provide at least one calendar year of air quality monitoring data before the attainment deadline to demonstrate that the plan is providing for attainment. To account for its control measures that were put in place expeditiously, Tennessee provided the permits for selected controls that were determined necessary to bring the area into attainment. Tennessee, in its February 9, 2023, second nonattainment plan, determined that there were no additional control measures that would advance the attainment date. Additionally, as discussed below, Tennessee’s February 9, 2023, submission contains contingency measures that would be enacted within specified timeframes in the event ambient air monitoring exceeds SO₂ levels to ensure attainment of the 2010 1-hour SO₂ NAAQS by the applicable attainment date. Furthermore, Tennessee has demonstrated in its redesignation request and maintenance plan that the Area has attained well in advance of the 2027 attainment date. Therefore, the EPA is proposing to find that Tennessee’s February 9, 2023, SIP submittal has met the requirements of 172(c)(6).

CAA Section 172(c)(9)—Contingency Measures: CAA section 172(c)(9) requires that nonattainment plans contain contingency measures that take effect without further action by the State or the EPA if the nonattainment area fails to meet RFP or attain the NAAQS by the applicable attainment date. Although CAA section 172(c)(9) requires plans to contain contingency measures that take effect if a nonattainment area fails to make RFP, the EPA notes that the Sullivan County Area has already demonstrated RFP with the emission reductions achieved at Eastman, which are submitted for the SIP to be permanent and enforceable, including fuel conversion of B–253 boilers 25–29, the installation of the permanent DSI controls on B–83 for boilers 23 and 24, the adoption of a combined emission limit for boiler houses B–83 and B–325, individual emission limits for boilers 30 and 31, and updates to emission limits for HWIs, flares, and the sulfur recovery

⁷⁹ *Id.* at 40.

⁸⁰ See 57 FR 13498, 13547 (Apr. 16, 1992).

⁸¹ See Table 5 in this NPRM.

⁸² *Id.*

⁸³ Tennessee also included a base year inventory of 2017 to support its February 9, 2023, second nonattainment SIP.

⁸⁴ See 86 FR 11873 (Mar. 1, 2021).

⁸⁵ See 81 FR 85410 (Nov. 28, 2016).

⁸⁶ See *id.* at 85415.

plant incinerator, and the emission limits included for the nearby source of Primerster. These required controls are proposed for incorporation into the SIP via conditions in SIP operating permit No. 080222 (superseded in part by SIP operating permit No. 082237 (Amendment #1)) and SIP operating permit No. 083740, PSD permit No. 955272F for Eastman, and title V operating permit No. 574994 for Primerster. As described above, the EPA is proposing to find that RFP has already been made and that Tennessee's February 9, 2023, SIP submission has therefore met CAA section 172(c)(2).

Furthermore, although CAA section 172(c)(9) requires plans to contain contingency measures that take effect if a nonattainment area fails to meet the NAAQS, the EPA notes that the Sullivan County Area has already demonstrated attainment with the permanent and enforceable emission reductions achieved at Eastman and emission limits included for the nearby source of Primerster. As to the contingency measures required to take effect under CAA section 172(c)(9) if a nonattainment area fails to attain the NAAQS by the applicable attainment date, Tennessee's February 9, 2023 SIP submission contains contingency measures consistent with the 2014 SO₂ Guidance for 1-hour SO₂ Nonattainment Area SIP Submissions.⁸⁷ These contingency measures would be triggered upon notification by Tennessee that either: (1) a reference monitor for the area has registered four validated daily maximum one-hour ambient SO₂ concentrations in excess of the standard during calendar years 2024, 2025, 2026, or 2027; or (2) that a monitored SO₂ violation based on the design value occurred during or after calendar year 2028.

Upon activation of a trigger, Tennessee will notify Eastman that a reference monitor has registered four validated daily maximum 1-hour ambient SO₂ concentrations in excess of the standard during a calendar year. Eastman would then be required, without any further action from Tennessee or the EPA, to undertake a full system audit of all SO₂-emitting emissions units. Then, within 30 days of

the notification, Eastman must submit a written system audit report to Tennessee. The system audit report must include certain information identified in the submittal, including, but not limited to, recommended provisional SO₂ emission control strategies for each affected unit and evidence that these control strategies have been deployed, as appropriate. Once Tennessee receives the system audit report, it will immediately begin a 30-day evaluation period to diagnose the cause of the monitored exceedance, followed by another 30-day period during which Tennessee will consult with Eastman to develop and implement operational changes as necessary to prevent future violations of the standard. Examples of changes may include fuel switching to reduce or eliminate the use of sulfur-containing fuels or physical or operational reduction of production capacity. Finally, if a permit modification is deemed necessary by TDEC, Tennessee would issue a final permit within the State's statutory timeframes required by TAPCR 1200–03–09. Any new emission limit required by such a permit would be submitted to the EPA as a SIP revision. If an emission source is found to be noncompliant with a SIP emission limit, the Technical Secretary of Tennessee will determine if additional limits are necessary to meet the requirements of CAA section 172(c)(9).

The EPA is proposing to find that Tennessee's contingency measures in the February 9, 2023, SIP revision satisfy the applicable requirements of CAA section 172(c)(9) because the contingency measures outlined above constitute a comprehensive program to identify sources of violations of the SO₂ NAAQS that includes requirements of follow-up for compliance and enforcement, and therefore, the State will be able to address a failure to make RFP or to attain the NAAQS.

2. Attainment Demonstration

To demonstrate future attainment of the NAAQS by predicting the effect of air emissions on ambient air quality, States may be required, under CAA section 110(a)(2)(K), to include air quality modeling and the associated data in a SIP submittal.

To demonstrate that Tennessee's control strategy will provide for timely attainment of the 2010 1-hour SO₂ NAAQS as expeditiously as practicable, but no later than the April 5, 2027, attainment date, TDEC's attainment demonstration included a modeling analysis, which followed the procedures in the EPA's Guideline on Air Quality Models in 40 CFR part 51, Appendix W.

TDEC included an atmospheric dispersion modeling analysis using AERMOD that accounted for all source-specific SIP revisions for units at Eastman and Primerster, as well as modeled PTE of any smaller units at Eastman and nearby sources not within the nonattainment area that were not included as source-specific SIP revisions. As discussed in more detail in section V.C.1.b of this NPRM and the Sullivan County SO₂ Modeling TSD, the model predicted a maximum three-year average 99th percentile of daily maximum 1-hour average SO₂ concentration for the Sullivan County Nonattainment Area of 74.82 ppb, a value below 75 ppb, that demonstrates the 2010 SO₂ NAAQS will be attained by April 5, 2027. Based on results of the modeling and TDEC's approach, the EPA proposes to find that Tennessee's attainment demonstration satisfies the requirements under CAA section 110(a)(2)(K) by performing appropriate air quality modeling and providing the associated data.

3. The EPA's Proposed Approval of Tennessee's 2023 Sullivan County SO₂ Nonattainment SIP

Based on the EPA's review and evaluation of the information in sections V.A, V.B, and V.C of this NPRM, the EPA is proposing to find that Tennessee's February 9, 2023, second nonattainment SIP for the 2010 SO₂ NAAQS satisfies the applicable requirements of CAA sections 110(a)(2)(D)(i)(I), 110(a)(2)(I), 110(a)(2)(K), and 110(I). As discussed above in section II, the EPA issued an FFA since the Sullivan County Area did not attain the relevant NAAQS within five years of the October 4, 2013, nonattainment designation. Once the CAA sections 191 and 192 deadlines were missed, this triggered a new CAA section 179(d) deadline to submit a nonattainment SIP by April 5, 2023, in lieu of the CAA section 191 and 192 requirements, and established an attainment date of April 5, 2027. The EPA has determined that Tennessee has satisfied the CAA requirements, and thus, has fully addressed the nonattainment plan provisions for the Sullivan County Nonattainment Area.

C. Redesignation Criteria

The five redesignation criteria under CAA section 107(d)(3)(E), identified in section III, above, are discussed in greater detail for the Sullivan County Area in the following paragraphs.

⁸⁷ The SO₂ Nonattainment Area Guidance explains that "Since SO₂ control measures are by definition based on what is directly and quantifiably necessary to attain the SO₂ NAAQS, it would be unlikely for an area to implement the necessary emission controls yet fail to attain the NAAQS. Therefore, for SO₂ programs, the EPA has explained that 'contingency measures' can mean that the air agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake an 'aggressive' follow-up for compliance and enforcement"

1. Criterion (1)—The Sullivan County Area Has Attained the SO₂ NAAQS

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has attained the applicable NAAQS.⁸⁸ There are generally two components needed to support an attainment determination for the 2010 SO₂ NAAQS, which should be considered interdependently. The first component relies on air quality monitoring data. For SO₂, any available monitoring data would need to indicate that all monitors in the affected area are meeting the standard as stated in 40 CFR 50.17 using data analysis procedures specified in 40 CFR part 50, Appendix T. The second component relies on air quality modeling data. If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area but analyses show that none of the monitors are in the area of maximum concentration, then air quality dispersion modeling will generally be needed to estimate SO₂ concentrations in the area. Such dispersion modeling should be conducted to estimate SO₂ concentrations throughout the nonattainment area using actual emissions and meteorological information for the most recent three calendar years.⁸⁹

However, the EPA may also make determinations of attainment based on the modeling for the affected area, eliminating the need for separate

actuals-based modeling to support a redesignation request. Furthermore, the EPA's SO₂ Nonattainment Area Guidance states that "An approvable attainment demonstration would be an air quality modeling analysis that demonstrates that the emission limits in the plan will suffice to provide for timely attainment of the affected standard. In cases where the necessary emission limits have not previously been made a part of the SIP, or have not otherwise become federally enforceable, the plan needs to include the necessary enforceable limits in adopted form suitable for incorporation into the SIP in order for it to be approved by the EPA."⁹⁰ Thus, a demonstration that the control strategy in the SIP has been fully implemented (compliance records demonstrating that the control measures have been implemented as required by the approved SIP) would also be relevant for making the determination. As noted above, TDEC provides emissions data to demonstrate compliance with the SO₂ permit limits in its final SIP submission.

a. Monitoring Data

A SO₂ monitoring site is considered as attaining the 2010 1-hour SO₂ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.17 and appendix T of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. Specifically, to attain

the SO₂ NAAQS at each monitoring site, the 3-year average of the annual 99th percentile (fourth highest value) of daily maximum 1-hour average concentrations measured at each monitor within an area must be less than or equal to 75 ppb. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Tennessee currently operates four ambient SO₂ monitors in the Area, as shown in Tables 2 and 3, below. As shown in Table 2, the design values at the Ross N. Robinson and Skyland Dr. monitors have generally decreased since 2019, and the design values at the Andrew Johnson School and Happy Hill monitors, which began operation later, have generally decreased since 2021. The quality-assured, complete, and certified 2023–2025 design values are below the 2010 1-hour SO₂ standard of 75 ppb at all four monitoring sites. As shown in Table 3, since 2022, the annual 99th percentile daily maximum 1-hour SO₂ concentration has remained below the standard at all four monitors. The significant decrease in monitored ambient SO₂ concentrations is due to the implementation of the measures at Eastman discussed in section V.A and V.C.3.

TABLE 2—1-HOUR SO₂ THREE-YEAR DESIGN VALUES (ppb) FOR THE SULLIVAN COUNTY NONATTAINMENT AREA FOR 2017–2019 TO 2023–2025

Site name	AQS ID	2017–2019	2018–2020	2019–2021	2020–2022	2021–2023	2022–2024	2023–2025
Ross N. Robinson	47–163–6001	79	63	49	41	38	38	41
Skyland Dr	47–163–6002	55	38	27	27	27	29	26
Andrew Johnson School	47–163–6003	*ND	*ND	87	71	67	57	57
Happy Hill	47–163–6004	*ND	*ND	53	51	52	49	49

*ND: No data available. The Andrew Johnson School monitor began operation on January 1, 2019, and the Happy Hill monitor began operation on October 10, 2018. As a result, both monitors did not have complete three-year design values until 2019–2021.

TABLE 3—ANNUAL 99TH PERCENTILE DAILY MAXIMUM 1-HOUR SO₂ MONITORED CONCENTRATIONS (ppb) FOR THE SULLIVAN COUNTY NONATTAINMENT AREA FOR 2017–2025

Site name	AQS ID	2017	2018	2019	2020	2021	2022	2023	2024	2025
Ross N. Robinson	47–163–6001	92	86	59	45	42	36	37	40	45
Skyland Dr	47–163–6002	78	57	30	27	24	29	28	30	21
Andrew Johnson School	47–163–6003	*ND	*ND	104	73	84	55	61	56	54
Happy Hill	47–163–6004	*ND	*ND	52	46	61	45	51	50	45

*ND: No data available. The Andrew Johnson School monitor began operation on January 1, 2019, and the Happy Hill monitor began operation on October 10, 2018.

⁸⁸ See CAA section 107(d)(3)(E)(i).

⁸⁹ In its June 18, 2025, submission, Tennessee provides an analysis of the existing monitoring network and states that Tennessee believes that the Andrew Johnson site (AQS ID: 47–163–6003) is

most representative of the maximum impact in the Area (Section 2.2 of the June 18, 2025, submission). However, the State does not rely on only air quality monitoring to show that the Area has attained. Instead, TDEC provides an air quality modeling analysis—with modeled potential to emit (PTE) in

lieu of actual emissions—to both confirm that the Area has attained and to show that the Area will continue to maintain the NAAQS.

⁹⁰ See SO₂ Nonattainment Area Guidance at p. 9, available in the docket for this action.

Preliminary monitoring data from the Sullivan County SO₂ monitors for 2026 indicates that all four monitors continue to meet the standard.⁹¹ The EPA is proposing to determine that the Sullivan County Area has attained the 2010 1-hour SO₂ NAAQS based on the modeling analysis discussed below, as well as the quality-assured, complete, and certified ambient air monitoring data for the 2023–2025 design value period where monitoring values are below the applicable NAAQS.

Tennessee has committed in its June 18, 2025, SIP revision to continue operation of an ambient SO₂ monitoring network in the Area in accordance with the air monitoring regulations in 40 CFR part 58 to continue to verify the Area meets the SO₂ NAAQS. Any future changes to the State and Local Air Monitoring Stations network in the Sullivan County Area will be submitted to the EPA for approval in Tennessee's annual ambient air monitoring network plan, as required by 40 CFR 58.10.

b. Modeling Analysis

As discussed above, Tennessee's February 9, 2023, submission contains a modeling analysis to demonstrate that the Area has attained the 2010 SO₂ NAAQS as a result of compliance with the new and existing SO₂ emissions limits for sources at Eastman and Primerster. This modeling analysis is resubmitted in the June 18, 2025, submission. When the EPA designated the Sullivan County Area as a nonattainment area for the 2010 SO₂ NAAQS, the Agency determined that Eastman was the primary cause of the 2010 SO₂ NAAQS violations in the Sullivan County Area. Details regarding the modeling analysis are summarized in the following paragraphs. A more detailed discussion of TDEC's modeling can be found in the EPA's Sullivan County SO₂ Modeling TSD, which is included in the docket for this NPRM.

TDEC's modeling analysis was developed in accordance with the EPA's Guideline on Air Quality Models (Modeling Guideline)⁹² and the Modeling Guidance provided in appendix A of the EPA's SO₂ Nonattainment Area Guidance. The modeling was performed using the EPA's preferred air dispersion modeling system—the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD)—

consisting of the AERMOD (version 22112) air dispersion model⁹³ and multiple data input preprocessors as described below.

TDEC used regulatory default options in the AERMOD modeling. Based upon an evaluation of the land use within three kilometers of Eastman, more than 50 percent of the land use is classified under urban land use categories rather than rural land use categories. Therefore, urban dispersion coefficients were used in the modeling. Due to the larger amount of heat released from Eastman, although the facility is located in a city with a population of about 50,000, a surrogate population value of 200,000 was calculated by Eastman for use with the urban option in AERMOD as the “effective population.” Additional details about the procedures used for the urban option are provided in the EPA's Sullivan County SO₂ Modeling TSD.

AERMET and AERMINUTE are data pre-processors for the EPA's AERMOD air quality dispersion model, generating meteorological observations and wind data information, respectively. AERMET (version 22112) and AERMINUTE (version 15272) were used to process one year (April 2012–March 2013) of site-specific meteorological data⁹⁴ (wind speed and direction, temperature, and turbulence parameters), collected at a 100-meter tower equipped with a Sound Detection and Ranging (SODAR) wind profiler system specifically installed near Eastman for this modeling analysis. Additional meteorology inputs needed for AERMOD that were not collected at the site-specific meteorology station (e.g., cloud cover data) were obtained from the Bristol/Johnson/Kingsport, Tri-Cities Regional Airport (KTRI) National Weather Service (NWS) automated surface observing system (ASOS) station (WBAN No. 13877), in combination

with twice daily upper-air meteorological soundings from the Nashville, Tennessee NWS station (WBAN No. 13897). The Tri-Cities Regional Airport is located approximately 8.5 miles east/southeast of Eastman, and the Nashville Airport is located approximately 200 miles west of Kingsport, but it has mean mixing heights comparable to the Kingsport area. The pre-processor AERSURFACE (version 20060) was used to process 2011 National Land Cover Database (NLCD) data to derive the albedo, Bowen ratio, and surface roughness surface characteristics needed for AERMET.

The pre-processor AERMAP (version 18081) was used to generate terrain inputs for the receptors, based on a digital elevation mapping database from the National Elevation Dataset developed by the U.S. Geological Survey. Model receptors were placed at 50-meter intervals along the fence-line, public access roads, and riverbanks as well as in a 100-meter grid throughout the remainder of the three-km non-attainment area (excluding the area inside the Eastman fence-line because access is controlled by fences, gates, and other restrictions to limit public access and is therefore not considered to be ambient air).

TDEC's modeling analysis is based upon permitted allowable emissions limits for the primary SO₂ emissions sources at Eastman⁹⁵ and the other nearby sources that are included in the modeling.⁹⁶ Smaller SO₂ emissions sources at Eastman, which will not have emissions limits incorporated into the SIP, were modeled at maximum uncontrolled hourly emissions rates. One batch chemical manufacturing source at Eastman was excluded from the modeling analysis based upon the intermittent nature of its operation. Additional details about this intermittent source are provided in Tennessee's May 20, 2026, supplement to the redesignation request SIP submittal and the EPA's Sullivan County SO₂ Modeling TSD. The allowable emissions limits for the B–83 and B–325 coal-fired boilers, B–248 liquid and solid hazardous waste incinerator, and B–351 Coal Gasification

⁹³ AERMOD version 22112 was the current version available at the time the modeling was performed by TDEC in 2023.

⁹⁴ As discussed in Section 8.4.2.e of the EPA's Guideline on Air Quality Models in 40 CFR part 51, Appendix W, if at least 1-year of site-specific meteorology data is available, it is preferred for use in air quality modeling analyses. Prior to the data being collected by Eastman in 2012–2013, Eastman and TDEC consulted with the EPA about using a partial year in 2012 and partial year in 2013 to meet the 1-year of site-specific data requirement. The EPA concurred that it was not necessary for the 1-year of data to correspond to a single calendar-year (January–December). The April 2012–March 2013 site-specific data continues to be the best available wind, temperature and turbulence data for the modeling analysis because data for these parameters from the nearby Tri-Cities Regional Airport NWS site is located outside the river valley where Eastman is located, so the parameters measured at the airport are not representative of the conditions at the facility location.

⁹¹ Preliminary 2026 air monitoring data is available at <https://www.epa.gov/outdoor-air-quality-data>.

⁹² See 40 CFR part 51 Appendix W. For additional information on the November 29, 2024, final Appendix W revision rule, see <https://www.epa.gov/scram/2024-appendix-w-final-rule>.

⁹⁵ The primary SO₂ emissions sources at Eastman are B–83 and B–325 Coal-Fired Boilers, B–253 Natural Gas Boilers, B–248 Solid and Liquid hazardous waste incinerators, B–334 Incinerator for Acid Gas Removal and Sulfur Recovery Plan, B–351 Coal Gasification Flares, B–55 Organic Acids and Anhydrides Manufacturing Vents, and Primerster B–441 Vent C Cellulose. The emissions limits that will be incorporated in the SIP are provided in Table 4–4 of TDEC's June 18, 2025, submission.

⁹⁶ The nearby sources include Primerster, Domtar, and Cardinal Glass.

Flares are 30-day average SO₂ emissions limits. The modeling analysis must be based upon the maximum allowable 1-hour SO₂ emissions. Therefore, TDEC used the procedures contained in EPA’s SO₂ Nonattainment Area Guidance to determine the short-term 1-hour critical emission value (CEV) for each of these sources based on modeling and then established comparably stringent LTA permit limits. As described in the SO₂ Nonattainment Area Guidance, the CEV is the maximum modeled emission rate that results in attainment and can be used as a reference point for setting the longer term emission rates. Modeling multiple sources of emissions together to determine the worst-case attainment scenario will result in a CEV associated with each source.

As discussed in the LTA TSD, TDEC derived longer term emission limits from modeled CEVs for three sets of emission sources. For the coal-fired boilers (B–83 and B–325), Tennessee established a new single, combined emission limit of 1,248 lb/hr of SO₂ emissions on a 30-day rolling average. TDEC derived this limit from the CEV of 1,600 lb/hr and an adjustment factor of 0.78. An adjustment factor is the ratio that accounts for the variability of the hourly emissions for a source. For the hazardous waste incinerators (B–248–1 and B–248–2), Tennessee established separate CEVs for each of the incinerators at 20 lb/hr and 10 lb/hr, respectively. After determining the CEVs for each incinerator, Tennessee followed the SO₂ Nonattainment Area Guidance to establish comparably stringent 30-day rolling average emission limits for each incinerator at 15.2 lb/hr (adjustment factor of 0.76) and 2.0 lb/hr (adjustment factor of 0.2), respectively. For the Coal Gasification

Flares (B–351–5), Tennessee established a longer term emission limit of 14.6 lb/hr on a 30-day rolling average. This emission limit was derived from the CEV of 16.28 lb/hr of SO₂ emissions. Additional details about the process for determining the CEVs and 30-day average permit limits are contained in the EPA’s Sullivan County SO₂ Modeling TSD and LTA TSD.

The Building Profile Input Program for Plume Rise Model Enhancements (BPIPPRM) (version 04274) preprocessor was used to generate direction-specific building downwash parameters for input into AERMOD. The stack heights used in the modeling meet the Good Engineering Practice stack height criteria specified in 40 CFR 51.118. Twenty-four buildings/structures were processed for the four primary boiler stacks at Eastman (B–83 Boilers B–18–22, B–83 Boilers B–23–24, B–325, and B–253). TDEC’s modeling also evaluated the potential building downwash effects from these same twenty-four buildings/structures for smaller emissions sources at Eastman, and the Primster, Domtar and Cardinal Glass facilities. The BPIPPRM results indicated that these buildings influenced modeled concentrations for a total of 31 modeled Eastman sources and the Primster source. Building downwash was not found to influence concentrations from the other nearby sources included in the modeling analysis (Domtar and Cardinal Glass) because of their distance from the nonattainment area (1 km and 23 km, respectively).

TDEC evaluated other large sources of SO₂ emissions within 50 km of the nonattainment area and determined that three additional facilities—Primster, Domtar, and Cardinal Glass—could potentially impact modeled SO₂ concentrations in the nonattainment

area based upon the magnitude of their emissions and/or their distance from the nonattainment area. Primster has a relatively small amount of SO₂ emissions (1.1 tons/year) but is located in the nonattainment area and adjacent to Eastman. Domtar (6.95 tons/year in 2022) and Cardinal Glass (421.58 tons/year in 2022) are located outside the nonattainment area.

To account for SO₂ impacts from other emissions sources not directly included in the AERMOD modeling analysis, TDEC used background SO₂ concentrations obtained from monitoring data collected at the Mammoth Cave National Park ambient SO₂ monitor near Bowling Green, Kentucky (AQS ID: 21–061–0501). TDEC used data from 2019–2021 to calculate hourly varying “season-by-hour-of-day” background concentrations for input into AERMOD.⁹⁷ Additional details about the process for determining the background concentrations are included in the EPA’s Sullivan County SO₂ Modeling TSD. The Mammoth Cave monitor is approximately 320 km from Eastman, and TDEC determined that it is representative of the Area based upon the similarity of terrain and mix of sources similar to those in the Sullivan County Area.

Table 4 shows that the maximum modeled 99th percentile daily 1-hour SO₂ concentration using the one year of representative site-specific meteorological data (April 2012–March 2013) is less than or equal to the 2010 SO₂ NAAQS of 75 ppb based on the 1-hour CEV emission rates for the sources with LTA limits and permitted allowable or maximum uncontrolled emissions for the other sources included in the modeling.

TABLE 4—MAXIMUM MODELED 99TH PERCENTILE DAILY MAXIMUM 1-HOUR SO₂ IMPACTS IN THE SULLIVAN COUNTY AREA

Averaging time	Maximum predicted impact	Background	Total	SO ₂ NAAQS
1-hour	74.82 ppb	Included in the modeling	74.82 ppb	75 ppb.

The final modeling resulted in a highest predicted 99th percentile daily maximum 1-hour concentration of 74.82 ppb with no modeled violations of the 2010 SO₂ NAAQS in ambient air locations in the Sullivan County Area. Additional details about the modeling are provided in the EPA’s Sullivan County SO₂ Modeling TSD.

Additionally, the modeled demonstration described above is consistent with CAA requirements, the EPA’s Modeling Guideline at 40 CFR part 51, Appendix W, and the SO₂ Nonattainment Area Guidance. Therefore, the EPA proposes to determine that the air quality modeling and related information contained in

TDEC’s February 9, 2023, and June 18, 2025, submission demonstrates that the Sullivan County Area has attained the 2010 SO₂ NAAQS as a result of compliance with the permit limits at Eastman and Primster.

⁹⁷ The 2019–2021 data was the most-recent three-year dataset available at the time the modeling was performed by TDEC in 2023.

2. Criterion (2)—EPA Has Fully Approved the Applicable Implementation Plan Under CAA Section 110(k); and Criterion (5)—Tennessee Has Met All Applicable Requirements Under Title I of the CAA Section 110 and Part D.

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the State has met all applicable requirements under section 110 and part D of title I of the CAA in accordance with CAA section 107(d)(3)(E)(v) and that the State has a fully approved SIP under CAA section 110(k) for the area in accordance with CAA section 107(d)(3)(E)(ii). As discussed further in the following subsections of this NPRM, the EPA has already approved SIP revisions addressing certain applicable requirements under CAA section 110 and part D and is proposing to approve other revisions addressing the remaining applicable requirements for the Sullivan County Area.^{98 99} In today's proposed action, the EPA is proposing to approve these outstanding elements and is proposing to find that, if the Agency finalizes approval of the outstanding CAA part D elements, the June 18, 2025, redesignation request satisfies CAA sections 107(d)(3)(E)(ii) and (v).

a. General SIP Requirements

General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submission of a SIP that has been adopted by the State after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (PSD); provisions for the implementation of part D requirements (NNSR); provisions for air pollution modeling; and provisions for public and

local agency participation in planning and emission control rule development.

CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, the EPA has required certain States to establish programs to address the interstate transport of air pollutants. CAA section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. The transport SIP submission requirements, where applicable, continue to apply to a State regardless of the designation of any one area in the State. As a result, the EPA maintains that the CAA's interstate transport requirements should be construed to be applicable for purposes of redesignation.

In addition, the other CAA section 110(a)(2) elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purpose of redesignation. The area will still be subject to these requirements after the area is redesignated. CAA section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with the EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with CAA section 184 ozone transport requirements.¹⁰⁰ However, the EPA has approved Tennessee's SIP revisions related to the CAA section 110 requirements for the 2010 SO₂ NAAQS, including the interstate transport elements at CAA section 110(a)(2)(D)(i)(I).¹⁰¹

b. Title I, Part D, Applicable SIP Requirements

As discussed in section V.B. of this NPRM, the EPA is proposing to fully approve Tennessee's February 9, 2023, second SO₂ nonattainment SIP

submission under CAA section 110(k) as satisfying all the applicable requirements of title 1 under CAA sections 110(a)(2)(D)(i)(I), 110(a)(2)(I), 110(a)(2)(K), 110(l), 172, and 179.

3. Criterion (3)—The Air Quality Improvement in the Sullivan County Area Is Due to Permanent and Enforceable Emission Reductions

As discussed above, the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions¹⁰² to redesignate a nonattainment area to attainment. As discussed in section V.A of this NPRM, the EPA proposes to determine that the reduction in monitored SO₂ concentrations and the modeled attainment in the Sullivan County Area are due to emission reductions resulting from compliance with the control measures at Eastman that are identified for incorporation into the SIP and those that are already incorporated into the SIP as of December 11, 2025. The EPA is proposing to approve the measures from TDEC's February 9, 2023, second nonattainment plan and June 18, 2025, redesignation request, as supplemented on January 27, 2026, and May 20, 2026, as discussed in section V.A of this NPRM. Tennessee's June 18, 2025, submission also identifies SIP-approved State measures, some of which implement Federal requirements, that have been implemented to date. Those measures specifically regulate coal-fired boilers and hazardous waste incinerators.

The control measures identified for incorporation into the SIP have resulted in significant reductions in SO₂ emissions at several Eastman emission sources. Tennessee's June 18, 2025, submission assesses the SO₂ emission reductions achieved in the Area resulting from implementation and compliance with control measures. The submission shows that the improvement in air quality is attributed to the control measures that the EPA is proposing to make permanent and enforceable in the SIP and those that are already incorporated into the SIP as of December 11, 2025. Table 5, below, shows the change in actual SO₂

⁹⁸ The remaining applicable elements are sections 172(c)(1) (RACM/RACT), 172(c)(2) (RFP), 172(c)(4) (identification and quantification requirements), 172(c)(6) (requirement to include other control measures as may be necessary or appropriate to provide for attainment of such standard by the applicable attainment date), and 172(c)(9) (contingency measures).

⁹⁹ The EPA may rely on prior SIP approvals in approving a redesignation request, *see Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures that may need to be approved in conjunction with a redesignation action.

¹⁰⁰ *See* 61 FR 53174 (Oct. 10, 1996), 62 FR 24826 (May 7, 1997), 61 FR 20458 (May 7, 1996), and 60 FR 62748 (Dec. 7, 1995); *see also* 65 FR 37890 (June 19, 2000) and 66 FR 50399 (Oct. 19, 2001).

¹⁰¹ The EPA approved Tennessee's section 110 infrastructure SIP with respect to the 2010 1-hour SO₂ NAAQS. *See* 81 FR 85410 (Nov. 28, 2016), 83 FR 48237 (Sept. 24, 2018), and 88 FR 53800 (Aug. 9, 2023).

¹⁰² *See* CAA section 107(d)(3)(E)(iii).

emissions for Eastman's coal-fired boilers at Powerhouses B-253, B-83, and B-325 between 2011 and 2022¹⁰³ based on the implementation of the control measures discussed in section

V.A. The largest point sources of SO₂ in the Sullivan County Area are from Eastman's coal-fired boilers which cumulatively account for over 99 percent of the SO₂ emissions in the

Area. Overall, SO₂ emissions from Eastman's coal-fired boilers decreased by 84.8 percent between 2011 and 2022.

TABLE 5—EASTMAN ACTUAL EMISSIONS FROM COAL-FIRED BOILERS AND HAZARDOUS WASTE INCINERATORS

Source type	Description	SO ₂ emissions (tons)			Total emissions reduced (tons) [2011–2022]	Percent change [2011–2022]
		2011	2017	2022		
Coal-Fired Boiler	B-83, Boilers B-18 through B-24	5,686	4,447	2,227	3,459	– 60.83
	B-253, Boilers B-25 through B-29	14,897	4,779	7.34	14,890	– 99.95
	B-325, Boilers B-30 through B-31	1,276	1,340	1,100	176	– 13.79
	Totals	21,859	10,566	3,334	18,524	– 84.75
Hazardous Waste Incinerators *	B-248-1	20	40	3.44	16.56	– 82.80
	B-248-2	20	20	0.46	19.54	– 97.70
	Totals	40	60	3.90	36.10	– 90.25

* According to TDEC, the decrease in emissions from Eastman's incinerators were primarily the result of the sale of Eastman's adhesive resins business (the source of sulfur-containing waste in the incinerator feed) in 2022, and the emissions limits will ensure that SO₂ emissions from the incinerators do not interfere with the attainment or maintenance of the SO₂ NAAQS in the future.

4. Criterion (4)—The Sullivan County Area Has a Fully Approved Maintenance Plan Pursuant to CAA Section 175A

For redesignating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has a fully approved maintenance plan pursuant to CAA section 175A.¹⁰⁴ In conjunction with its request to redesignate the Sullivan County Area to attainment for the 2010 1-hour SO₂ NAAQS, Tennessee submitted a SIP revision to provide for the maintenance of the 2010 SO₂ standard for at least 10 years after the effective date of redesignation to attainment. The EPA proposes to find that this maintenance plan meets the requirements for approval under CAA section 175A for the reasons discussed below.

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Pursuant to CAA section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10

years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as the EPA deems necessary to assure prompt correction of any future 2010 1-hour SO₂ violations. The Calcagni Memorandum¹⁰⁵ provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory; maintenance demonstration; monitoring plan; verification of continued attainment; and a contingency plan. As discussed more fully below, the EPA proposes to find that Tennessee's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Tennessee SIP.

a. Attainment Emissions Inventory

As discussed in section V.C.1 of this NPRM, the Sullivan County Area demonstrated attainment of the 2010 1-hour SO₂ standard based on a combination of air quality monitoring and dispersion modeling.

Currently, the Area has an attaining design value for the 2010 SO₂ standard based on quality-assured monitoring data for the three-year period from 2023–2025.¹⁰⁶ Tennessee selected 2022 as the base year (*i.e.*, attainment emissions inventory year), which is one of the years in a three-year design value where Sullivan County monitored attainment of the SO₂ standard.¹⁰⁷ The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2010 SO₂ NAAQS. Consistent with CAA section 175A, Tennessee selected 2037 as the projected or future maintenance year. Tennessee relied on several emission data sources to develop the 2022 base

¹⁰³ See Table 4–1 in Tennessee's June 18, 2025, submission. The 2011 actual emissions represent the base year inventory for the Eastman coal-fired boilers before Sullivan County was designated nonattainment for the SO₂ NAAQS. Calendar year 2011 represents one of three calendar years for 2009 through 2011 that informed the EPA's SO₂ nonattainment designations in 2013. As discussed above, the EPA approved the 2011 base year inventory for the Area pursuant to CAA section 172(c)(3). Calendar year 2017 accounts for the level of SO₂ emissions at Eastman coal-fired units that reflect the partial implementation of the Area's control strategy with the completion of repowering three of five B-253 to natural gas. Calendar year 2022 emissions represent full implementation of the

Area's control strategy (*i.e.*, complete repowering of all five B-253 boilers to natural gas and the installation of DSI for B-83 boilers and 23 and 24).

¹⁰⁴ See CAA section 107(d)(3)(E)(iv).

¹⁰⁵ "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the "Calcagni Memorandum"), available at <https://www.epa.gov/ground-level-ozone-pollution/procedures-processing-requests-redesignate-areas-attainment>.

¹⁰⁶ Final air quality design values for all criteria pollutants, including SO₂, are available at <https://www.epa.gov/air-trends/air-quality-design-values>.

These design values are calculated in accordance with 40 CFR part 50.

¹⁰⁷ All Eastman boiler add-on controls (*i.e.*, repowering of B-253 Boilers 25 through 29 from coal to natural gas operation and installation of dry sorbent injection on B-83 Boilers 23 and 24) and new combined boiler SO₂ emission limit were implemented by 2022. Overall, boiler emissions decreased by 84.7% between 2011 and 2022 as a result of Eastman's control strategy. Following implementation of the control strategy, no exceedances of the NAAQS were measured at the four ambient air monitors in the Area for the first time in 2022. See Table 4 above and section 4.0 of TDEC's 2015 redesignation SIP submission.

year including the 2016v1¹⁰⁸ and 2016v2¹⁰⁹ Emissions Modeling Platforms (EMP); the 2017 and 2020 National Emissions Inventories (NEI);¹¹⁰ and the EPA's Motor Vehicle Emissions Simulator (MOVES) model (version 3.0.3).¹¹¹

Tennessee developed the 2022 attainment inventory by first generating a baseline emissions inventory for the Area starting with the actual emissions submitted annually to the NEI for 2022. With the exception of the point source category, TDEC apportioned the Area's county-level attainment and future year emissions in the Sullivan County Area using the 9.3 percentage ratio derived from the 2010 Census Bureau Population data for the entire Sullivan County to the estimated population of the Area.¹¹² Table 6, below, summarizes

the 2022 attainment and 2037 projected emission inventory for the Area which is composed of five source categories: point, area (or non-point), on-road mobile, non-road mobile, and locomotive/rail emissions.¹¹³ TDEC used emission data sets and information used by the EPA to develop the 2016v1 and 2016v2 emissions inventories to project attainment year emissions for 2022. For most source classification codes, Tennessee calculated a growth factor as the difference between 2026 and 2016 emissions, based on the equation below:

$$\text{Growth Factor} = (2026 \text{ emissions} - 2016 \text{ emissions})/10.$$

For each year between 2017 and 2022, TDEC calculated emissions for all source categories except point sources by adding the growth factor to the base

year (2016) and to each subsequent year. For on-road and non-road sources, Tennessee obtained 2022 and 2037 mobile source emissions by interpolation for 2022 and extrapolation for 2037 of the existing data assuming a constant rate of year-over-year change (*i.e.*, assuming emissions decrease by a constant percentage of the previous year's emissions rather than a constant tonnage).¹¹⁴ A summary of Tennessee's 2022 attainment and 2037 projected emission inventory for all five source categories is provided in Table 6, below. A comprehensive description of how Tennessee developed these inventories is discussed in the State's June 18, 2025, submission with supporting documentation located in Attachments A, B, C, and D.

TABLE 6—SUMMARY OF 2022 AND 2037 EMISSIONS INVENTORIES BY SOURCE CATEGORY

Source category	2022 SO ₂ emissions (tons)	Projected 2037 SO ₂ emissions (tons)
Point	3,368.1	7,338.1
Area	4.22	3.42
On-road Mobile	0.84	0.10
Non-road Mobile (Excluding Locomotive/Rail)	0.089	0.036
Locomotive/Rail	0.0039	0.0069
Total Emissions	3,373	115 7,342

i. Point Source Emissions: For point source emissions, Tennessee relied on the annual emissions submitted to NEI for 2022. There are only two point sources located in the Sullivan County Area—Eastman and Primerster. Eastman is the largest point source, and the 2022 actual emissions for the facility are summarized in Attachment A of Tennessee's June 18, 2025, submission. Eastman's coal-fired boilers were responsible for nearly all SO₂ emissions from the facility (approximately 98–99 percent), as indicated in Table 5–1 of Tennessee's June 18, 2025, submission. Eastman's SO₂ emissions have declined substantially following implementation

of the control strategy based on the completion of coal-fired to natural gas conversion of all five B–253 boilers (Boilers 25–29), the installation of a permanent DSI controls at Boilers B–23 and B–24 of Eastman's oldest coal-fired B–83 powerhouse, and a combined 30-day rolling SO₂ emission limit for Eastman's B–83 and B–325 powerhouses. See section V.A.3 of this NPRM. The other SO₂ point source in the Area, Primerster, operates a cellulose acetate manufacturing process southwest of Eastman. This facility includes one SO₂ emission source, the Cellulose Scrap Recovery Process, which is controlled by a wet scrubber.

Primerster is not subject to the annual or triennial air emissions reporting requirements pursuant to 40 CFR part 51, subpart A. Thus, actual emissions from this source were assumed to be equivalent to the emission limit of 0.25 lb/hr (1.1 tons/year) that EPA is proposing to incorporate into the SIP.

In Tennessee's June 18, 2025, submission, TDEC also assessed historical actual SO₂ emissions for large SO₂ emitting sources at Eastman. For the 2011 first base year inventory from Tennessee's May 11, 2017, nonattainment SIP, TDEC reported 21,859 tons of actual SO₂ emissions for the Area from emission units B–253, B–

¹⁰⁸ The 2016v1 inventory is available online at <https://www.epa.gov/air-emissions-modeling/2016v1-platform>. The CSV file containing the area source inventory (2016fh_proj_from_2014NEIv2_NONPOINT_final_20180119_08aug2019_nf_v1.csv) is available at https://gaftp.epa.gov/Air/emismod/2016/v1/2016emissions/2016fh_inventory_nonpoint_27sep2019.zip.

¹⁰⁹ The 2016v2 inventory is available online at <https://www.epa.gov/air-emissions-modeling/2016v2-platform>. The CSV file containing the area source inventory (MYR_nonpt_constant_2017NEI_NONPOINT_20200415_28sep2020_v1.csv) is available at https://gaftp.epa.gov/Air/emismod/2016/v2/2016emissions/2016fh_nonpoint_inventory_15sep2021.zip.

¹¹⁰ See <https://www.epa.gov/air-emissions-modeling/2022v1-emissions-modeling-platform>.

¹¹¹ See <https://www.epa.gov/moves/moves3-update-log#MOVES3.0.3>.

¹¹² Tennessee derived the percentage by using a population-weighted allocation of emissions of the entire county compared to the nonattainment area. See Figure B–1 and Table B–4 in Tennessee's June 18, 2025, submission.

¹¹³ The non-road category in this inventory excludes locomotive and rail emissions; thus, Tennessee provided these emissions as a separate source category. See Table 5–9 in Tennessee's June 18, 2025, submission.

¹¹⁴ This method assumes that the rate of change for SO₂ emissions is logarithmic rather than linear, so mobile source emissions approach a minimum value over time without reaching zero. See Figure 5–3 in Tennessee's June 18, 2025, submission. Using the 2017 base year as an initial condition and 2027 as a checkpoint, the year-over-year change was

numerically determined so that the projected 2027 emissions matched the value of the 2027 MOVES output. Using a year-over-year change of 13.25%, mobile source emissions for each year between 2018 and 2037 were determined in accordance with Equation 5–1 in Tennessee's June 18, 2025, submission.

¹¹⁵ The point source inventory, which comprises the vast majority of the SO₂ emissions for the Area, includes potential to emit rather than projected actual emissions in 2037 for Eastman and Primerster, the Area's point sources. The State is relying on air quality modeling to demonstrate ongoing maintenance. See section V.B.4.b—Maintenance Demonstration below for a detailed explanation why the Area's 2037 total projected SO₂ emissions is greater than the 2022 attainment year inventory. See also section 5.2.1.1 in Tennessee's June 18, 2025, submission.

83, and B-325, during which time no enforceable control measures were installed or operational and the Area was not attaining the SO₂ NAAQS. The 2017 second base year inventory from Tennessee's February 9, 2023, attainment demonstration reflected the partial natural gas conversion at B-253 for Boilers B-30 and B-31 from 2014 to 2017 resulting in incremental emission reductions when comparing the years

2011 and 2017. Table 7, below, provides the historic emissions data (*i.e.*, actuals and percentage of allowable emissions). This table shows historic emission rates from the base year (2011) used to determine the original design value for designation (that the EPA approved in 2021), an interim year (2017) that reflects partial implementation of the control strategy to repower all five of Eastman's B-253 boilers from coal to

natural gas operation (by the end of 2017, Eastman had implemented this strategy at three of the boilers), and a final year (2022) showing full implementation of the control strategy to repower all five B-253 boilers from coal to natural gas operation and install dry sorbent injection on B-83 boilers 23 and 24.

TABLE 7—HISTORIC SO₂ EMISSIONS FOR EASTMAN

Unit	2011 Annual actual SO ₂ emissions (tons)	2017 Annual actual SO ₂ emissions (tons)	2022 Annual actual SO ₂ emissions (tons)	Percent change, 2011–2022
B-253-1	14,897	4,779	7.37	99.95
B-83-1	5,686	4,447	2,227	60.83
B-325-1	1,276	1,340	1,100	13.79
Totals	21,859	10,566	3,334	84.75

To estimate point source emissions for 2037, the vast majority of which would be from Eastman, TDEC conservatively estimated allowable emissions and projected growth at the plant in terms of potential to emit—not projected actual emissions.

ii. Area Source Emissions: TDEC projected area source attainment year emissions for 2022 using emission data sets and information the EPA used to develop the 2016v1 and 2016v2 EMP. For most source classification codes, Tennessee calculated a growth factor as the difference between 2026 and 2016 emissions. For each year between 2017 and 2022, TDEC calculated future year emissions by adding the growth factor to the base year (2016) and to each subsequent year. TDEC used the final 2022 emissions for the attainment year emission inventory. TDEC apportioned county-level emissions to the Area using the 9.3 percent ratio of the 2010 census population data for the entire Sullivan County to the Area population. TDEC projected 4.22 tons of SO₂ emissions for the year 2022 and 3.42 tons of SO₂ emissions for the year 2037 attributable to area sources.

iii. On-Road Emissions: TDEC estimated on-road mobile source SO₂ emissions sources in the Sullivan County Area using locally gathered information on vehicle population and miles driven in the Area, as well as several other inputs, combined with MOVES modeling. On-road mobile sources include emissions from motorized vehicles that are normally operated on public roadways such as passenger cars, motorcycles, minivans, sport-utility vehicles, light-duty trucks, heavy-duty trucks, and buses. Tennessee obtained 2022 and 2037

mobile source emissions by interpolation for 2022 and extrapolation for 2037 of the existing data assuming a constant rate of year-over-year change (*i.e.*, assuming emissions decrease by a constant percentage of the previous year's emissions rather than a constant tonnage).¹¹⁶ On-road mobile source emissions are included in Attachment C of Tennessee's June 18, 2025, submission. TDEC projected 0.84 tons of SO₂ emissions for the year 2022 and 0.10 tons of SO₂ emissions for the year 2037 attributable to on-road mobile sources.

iv. Non-Road Emissions (Excluding Locomotive and Rail Emissions): TDEC projected nonroad mobile sources (excluding locomotive and rail emissions) for 2022 and 2037. Tennessee's non-road source category included emissions from aircraft, commercial marine, and rail. For the year 2022, TDEC used emission data sets and information the EPA used to develop the 2016v1¹¹⁷ and 2016v2¹¹⁸ EMP emission inventories. For each source classification code, Tennessee obtained 2022 and 2037 mobile source emissions by interpolation (for 2022)

¹¹⁶ See *supra* Footnote 116.

¹¹⁷ The 2016v1 inventory is available online at <https://www.epa.gov/air-emissions-modeling/2016v1-platform>. The CSV file containing the nonroad inventory (2016version1_nonroad_from_MOVES2014b_forAQ_aggSCC_03sep2019_nf_v3.csv) is available at https://gaftp.epa.gov/Air/emismod/2016/v1/2016emissions/2016fh_inventory_nonroad_27sep2019_contents.txt.

¹¹⁸ The 2016v2 inventory is available online at <https://www.epa.gov/air-emissions-modeling/2016v2-platform>. The CSV file containing the nonroad inventory (2016fh_v2platform_nonroad_from_MOVES_aggSCC_27apr2021_nf_v1.csv) is available at https://gaftp.epa.gov/Air/emismod/2016/v2/2016emissions/2016fh_nonroad_inventory_27may2021.zip.

and extrapolation (for 2037) of the existing data by assuming a constant rate of year-over-year change (*i.e.*, by assuming emissions increase or decrease by a constant percentage of the previous year's emissions rather than a constant tonnage).¹¹⁹ TDEC projected 0.089 tons of SO₂ emissions for the year 2022 and 0.036 tons of SO₂ emissions for the year 2037 attributable to non-road mobile sources (excluding locomotive and rail emissions).

v. Locomotive & Rail Emissions: TDEC projected locomotive and rail SO₂ emissions for 2022 and 2037. Base-year emissions from locomotives were taken from the EPA's 2020 NEI, and locomotive emissions were counted as point, non-point, and non-road mobile sources. The 2020 NEI for Tennessee indicates that railyard emissions were reported as non-point emissions (SCC 2285002006, Line Haul Locomotives: Class I Operations) and as non-road mobile source emissions (SCC 2285002015, Railway Maintenance). The 2020 locomotive emissions were projected to 2022 and 2037 from the 2020 base year by assuming a 50 percent increase in emissions per decade. The 50 percent adjustment was based on a review of other non-road categories and determining the highest calculated emissions increase for all non-road categories (45 percent for several types of compressed natural gas-burning equipment). TDEC projected 0.0039 tons

¹¹⁹ This method assumes that the rate of change is logarithmic rather than linear, so mobile source emissions approach a minimum value over time without reaching zero. Using the 2016 base year as an initial condition and 2026 as a checkpoint, the year-over-year change was numerically determined so that the projected 2026 emissions matched the EPA's 2026 inventory.

of SO₂ emissions for the year 2022 and 0.0069 tons of SO₂ emissions for the year 2037 attributable to locomotive and rail sources.

b. Maintenance Demonstration

Maintenance of the 2010 1-hour SO₂ standard is demonstrated either by showing that future emissions will not exceed the level of the attainment emissions inventory year or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. As discussed in the SO₂ Nonattainment Area Guidance, an EPA-approved demonstration of attainment that relies on air quality dispersion modeling using maximum allowable emissions during the 10-year maintenance period, such as Tennessee's modeling, can generally be expected to demonstrate that the standard will be maintained for the requisite 10 years and beyond without regard to any changes in operations of the pertinent sources that do not involve increases in maximum allowable emissions.¹²⁰

Tennessee elected to demonstrate maintenance of the 2010 standard through 2037 based on the same air dispersion modeling used to show that the Area has attained 2010 1-hour SO₂ standard in accordance with CAA section 107(d)(3)(E)(i).¹²¹ This modeling demonstrates continued maintenance through 2037 because it accounts for expected growth at Eastman during the 10-year maintenance period (*i.e.*, the construction and startup of three new natural gas-fired boilers and the methanolysis plant) and conservatively assumes that the remaining coal-fired boilers (B-83 and B-325 powerhouses) continuously operate at their maximum allowable hourly emission rate for the entire year.¹²² These boilers are instead included at their PTE in the 2037 inventory and in the modeling demonstration as if they will continue operating throughout the maintenance period to conservatively account for their continued operation through 2028. The EPA is proposing to find that the

Sullivan County Area will continue to maintain the 2010 1-hour SO₂ standard through year 2037 because the relevant sources are required to comply with permit limits that are either already incorporated in the SIP or through this NPRM are being proposed for incorporation into the SIP, and for which air quality modeling shows the Area will maintain the standard.

c. Monitoring Network

Tennessee operates four SO₂ monitors in the Sullivan County Area: Ross N. Robinson (AQS: 47-163-6001), Skyland Drive (AQS: 47-163-6002), Andrew Johnson Elementary School (AQS: 47-163-6003), and Happy Hill (AQS: 47-163-6004). See Table 3 in section V.C.1.a above. Tennessee has committed to continue operation of an ambient SO₂ monitoring network in the Area in accordance with the air monitoring regulations in 40 CFR part 58. Should changes to the existing network become necessary in the future, including a petition to discontinue the operation of any monitor, TDEC will consult with the EPA prior to any modifications to ensure the necessary regulatory steps and guidelines are met. If the EPA approves a petition to discontinue the use of one or more monitors, Tennessee commits to resume monitoring at any point should additional monitoring be required pursuant to 40 CFR part 58, appendix D, section 4.4. The EPA approved Tennessee's most recent 2025 ambient air monitoring network plan on October 10, 2025.¹²³

d. Verification of Continued Attainment

Tennessee, through TDEC, has the legal authority to enforce and implement all measures necessary to attain and maintain the NAAQS pursuant to the Tennessee Air Quality Act (TCA 68-201) and TAPCR 1200-03 and 0400-30.¹²⁴ Tennessee also has the authority to implement the specific control measures required to maintain the NAAQS pursuant to the requirements established in all relevant enforceable permits, including any supplemental updates, identified in section V.A. These control measures and associated MRR established in the permits, will ensure continued maintenance of the 2010 SO₂ NAAQS. Tennessee's maintenance plan provides

that TDEC will track the continued attainment and maintenance of the NAAQS through air quality monitoring as required by 40 CFR part 58 and through the implementation and enforcement of the SIP and its control measures.

e. Contingency Plan

CAA section 175A requires that a maintenance plan includes such contingency measures as the EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan identifies the contingency measures to be adopted, a schedule and a procedure for adoption and implementation, and a time limit for action by a State. In cases where attainment revolves around compliance of a single source or a small set of sources with emissions limits shown to provide for attainment, the EPA interprets "contingency measures" to mean that the State agency has a comprehensive program to identify sources of violations of the SO₂ NAAQS and to undertake aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreement pending the adoption of revised SIPs.¹²⁵ A State also identifies specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with CAA section 175A(d). The contingency plan included in the maintenance plan contains triggers to determine when contingency measures are needed and what kind of measures should be used.

Tennessee's maintenance plan provides a primary trigger and contingency measures upon activation of that trigger. This language provides that upon notification by the Tennessee Technical Secretary to the permittee that a reference monitor in the Area has registered four validated ambient SO₂

¹²⁰ See SO₂ Nonattainment Area Guidance at p. 67.

¹²¹ Tennessee's June 18, 2025, submission includes inventories for 2022 and 2037. Although the 2037 inventory is higher than the 2022 inventory, the 2037 inventory reflects attainment because the 2037 point source inventory is based on emissions used in the attainment modeling. As discussed in section V.C.4.a. above, the 2022 attainment inventory is based on actual SO₂ emissions from the EPA's 2022 NEI for point sources. See section V.B.4.a above for a summary of TDEC's development of both inventories.

¹²² The EPA also notes that TDEC conservatively included boilers, which have since shutdown, in the modeling demonstration. See 90 FR 57367 (Dec. 11, 2025).

¹²³ A copy of the EPA's letter approving the 2025 Tennessee ambient air monitoring network plan can be found in the docket for this NPRM.

¹²⁴ On June 11, 2025, the Board signed Board Order 25-012 finding that the Sullivan County Area attained the 2010 SO₂ NAAQS and approving the June 18, 2025, submission to the EPA seeking redesignation of the Area. See Attachment N in the June 18, 2025, submission.

¹²⁵ See SO₂ Nonattainment Area Guidance at p.69 and *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* 57 FR 13498 (Apr. 16, 1992). TDEC has an active compliance and enforcement program to address violations and will continue to operate this program to identify sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIPs. TDEC commits to adopt and expeditiously implement necessary corrective actions in the event of a violation.

concentrations in excess of the 2010 1-hour SO₂ NAAQS for any calendar year¹²⁶ during any maintenance period approved pursuant to CAA section 175A (a) and (b), the permittee shall undertake a full system audit of all emissions units subject to control under this plan. The permittee must submit a written system audit report within 30 days of the notification. The system audit report must detail the operating parameters of all emissions units, including smaller modeled emission units, for four 10-day periods up to and including the date upon which the reference monitor registered each exceedance, together with recommended provisional SO₂ emission control strategies for each affected unit and evidence that these control strategies have been deployed, as appropriate.

Upon consultation with the Technical Secretary, the permittee shall develop and implement operational changes as necessary to prevent future monitored violations of the standard. These changes may include fuel switching, physical or operational reduction of production capacity, or other changes as appropriate. If a permit modification is deemed necessary, any changes to existing permit conditions shall follow the applicable procedures of TAPCR 1200–03–09. If an emission source is found to be noncompliant with a SIP emission limit, the Technical Secretary will, in addition to conducting enforcement proceedings to bring the source into compliance with its SIP limit, determine whether additional limits must be added to the SIP in accordance with CAA section 175A.¹²⁷

In addition to the primary trigger described above, Tennessee has a comprehensive program to identify sources of violations of the SO₂ NAAQS

and will undertake an aggressive follow-up for compliance and enforcement, including expedited procedures for establishing enforceable consent agreements pending the adoption of revised SIPs.¹²⁸

A trigger-level response will consist of a study to determine whether emissions from sources within the nonattainment area (or nearby sources located outside of the nonattainment area, as appropriate) are increasing or indicate a trend toward higher SO₂ concentrations. The study would evaluate whether the trend, if any, is likely to continue and any control measures necessary to reverse the trend, taking into consideration ease and timing for implementation, as well as economic and social considerations. If new control measures are already promulgated and scheduled to be implemented at the Federal or State level, and if those measures are determined to be sufficient to address any increase in peak SO₂ concentrations, additional local measures may be unnecessary. Tennessee will submit to the EPA an analysis to assess whether the proposed measures are adequate to reverse the increase in SO₂ concentrations and to maintain the NAAQS within the Area. If additional controls are necessary, Tennessee will implement the appropriate contingency measures needed to assure future attainment of the SO₂ NAAQS. Contingency measures would be adopted and implemented as expeditiously as possible, but no later than 24 months after the triggering event. The proposed schedule for these actions would be as follows:

- Six months to identify appropriate contingency measures, including identification of emission sources and appropriate control technologies;
- Between three and six months to initiate a stakeholder process; and
- Between nine and twelve months to implement the contingency measures. This step would include the time required to draft rules or SIP amendments, complete the rulemaking process, and submit the final plans to the EPA.

If a longer schedule is required to implement specific contingency measures, then, upon selection of the appropriate measures, Tennessee will notify the EPA of the proposed schedule and will provide sufficient information to the EPA to demonstrate that the proposed measures are a prompt correction of the triggering event. The selection of emission control measures will be based on cost-effectiveness,

emission reduction potential, economic and social considerations, or other factors that the State deems to be appropriate. Selected emission control measures will be subject to public review, and Tennessee will seek public input prior to selecting new emission control measures.

D. Public Notice and Anti-Backsliding

CAA section 110(l) requires that each SIP revision submitted by a State must be adopted by a State after reasonable notice and public hearing. To meet this requirement, on November 9, 2022, Tennessee notified the public and provided an opportunity for public comment and hearing on its proposed SO₂ SIP revision for a nonattainment plan and attainment demonstration for the Sullivan County Area. The public comment period closed December 14, 2022. Tennessee also held a public hearing on December 15, 2022. Tennessee received several comments on the proposed SIP revision that it responded to. Tennessee submitted its SO₂ SIP revision for a nonattainment plan and attainment demonstration for the Sullivan County Area to the EPA on February 9, 2023, which included the comments received and Tennessee's responses. Additionally, on February 13, 2025, Tennessee notified the public and provided an opportunity for public comment and hearing on its proposed redesignation request and accompanying maintenance plan SIP revision. The public comment period closed March 20, 2025. Tennessee also held a public hearing on March 20, 2025. Tennessee received several comments on the proposed SIP revision that it responded to. On June 18, 2025, Tennessee submitted a request to the EPA to redesignate the Sullivan County Area from nonattainment to attainment, with an accompanying SIP revision consisting of a maintenance plan for the Sullivan County Area, which Tennessee supplemented on January 27, 2026, and May 20, 2026. Tennessee's submission included the comments received and Tennessee's responses. As such, the EPA proposes to find that Tennessee has met this requirement of CAA section 110(l) with its February 9, 2023, and June 18, 2025, SIP revisions.

Further, under CAA section 110(l), the EPA may not approve a SIP if it would interfere with any applicable requirement concerning NAAQS attainment, reasonable further progress toward attainment, or any other applicable requirement of the CAA. This requirement is often referred to the "anti-backsliding" provision of the CAA. As demonstrated in sections V.A.–C., Tennessee's February 9, 2023, and

¹²⁶ Tennessee's May 20, 2026, supplement modifies the contingency measure primary trigger language in section 6.0 of the redesignation SIP narrative (and Condition G4 of SIP operating permit No. 082237 (Amendment #1)) adding the phrase "any calendar year" before the phrase "during the maintenance period" to clarify that Eastman is required to conduct a full system audit should a monitor in the maintenance area record four exceedances in any calendar year within the maintenance period. See Tennessee's May 20, 2026, SIP supplement narrative including Attachments A and B, which is included in the docket for this NPRM.

¹²⁷ Tennessee's May 20, 2026, supplement modifies the contingency measure primary trigger language in section 6.0 of the redesignation SIP narrative (and Condition G4 of SIP operating permit No. 082237 (Amendment #1)) replacing "172(c)(9)" with "175(A)" for the maintenance plan citation in the SIP narrative and Condition G4 of permit No. 082237 (Amendment #1). See Tennessee's May 20, 2026, SIP supplement narrative including Attachments A and B, which is in the docket for this NPRM.

¹²⁸ See Section 6.0 Maintenance Plan Requirements in the June 18, 2025, submission.

June 18, 2025, SIP Revisions are not relaxations of any existing requirements and are expected to preserve or improve the ambient air quality in the Sullivan County Area as it existed when the area was designated as nonattainment on October 4, 2013. Thus, the EPA proposes to find that Tennessee's February 9, 2023, and June 18, 2025, SIP Revisions meet the anti-backsliding provisions of CAA sections 110(l).

VI. Incorporation By Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections II and III of this preamble, the EPA is proposing to incorporate by reference the following permit conditions for Eastman: Conditions G2, G3, G4, S2–1 (including Appendix 2), S2–2, S3–1(B) along with S3–1 Compliance Method A (including Appendix 3), S3–2, S3–3, S4–1, and S4–2 from SIP operating permit No. 082237 (Amendment #1) (State effective May 13, 2026); the entirety of SIP operating permit No. 083740, including appendix 1 (State effective January 14, 2026);¹²⁹ Condition 6 from Permit Number 966859F (State effective June 5, 2013); and the following permit condition for Primester: Condition E5–1 from Permit Number 574994 (State effective January 1, 2020). These permit conditions contain SO₂ emission limits, control measures, and compliance parameters for SO₂-emitting sources at Eastman and Primester.¹³⁰ The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations.¹³¹ Thus, in reviewing SIP submissions, the EPA's role is to

approve State choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve State law as meeting Federal requirements and do not impose additional requirements beyond those imposed by State law. Furthermore, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. For these reasons, these proposed actions:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose

substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175.¹³²

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: October 22, 2026.

Kevin McOmber,

Regional Administrator, Region 4.

[FR Doc. 2026–22063 Filed 10–28–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2026–4588; FRL 13424–01–OW]

Alaska Underground Injection Control (UIC) Program; Class VI Primacy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) has received a complete Underground Injection Control (UIC) application from the State of Alaska, requesting primary enforcement responsibility (primacy) for Class VI injection wells under Safe Drinking Water Act (SDWA) section 1422. The EPA's approval of the State's UIC program primacy application would allow the Alaska Oil and Gas Conservation Commission (AOGCC) to issue and enforce compliance with UIC Class VI permits for injection wells used for geologic carbon sequestration. In this action, the EPA proposes to approve Alaska's application to implement the UIC program for Class VI injection wells located within the State, except those located within Indian country and those located within areas of exclusive Federal jurisdiction.

DATES: Comments must be received on or before December 14, 2026. *Public hearing:* The EPA will hold one virtual public hearing during the comment

¹²⁹ SIP operating permit No. 083740 includes Conditions G2, G3, G4, S5–1, S5–2, S6–1, and S6–2 and Appendix 1, which are requested to be incorporated into the SIP.

¹³⁰ As noted previously, Tennessee relies on additional emission limits included in the 2023 second nonattainment SIP that meet CAA section 172(c)(1) and 172(c)(6) requirements but which were previously approved into Tennessee's SIP. See Table 1a of this NPRM and 90 FR 57367 (Dec. 11, 2025).

¹³¹ See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

¹³² See 65 FR 67249, November 9, 2000.

period. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2026–4588 by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday 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 personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mary Hastings Puckett, Drinking Water Infrastructure Development Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; or Evan Osborne, UIC Program Specialist, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Mary Hastings Puckett can be reached by emailing UICprimacy@epa.gov.

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I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2026–4588, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute to the EPA's docket at <https://www.regulations.gov>. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

B. Participation in Public Hearing

The EPA will hold one virtual public hearing during the public comment period no earlier than 30 days after the date of this publication. To register to speak at the virtual hearing, please use the online registration form available at

<https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program> or contact us by email at UICprimacy@epa.gov. One week prior to the public hearing, the EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program>. Please refer to <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program> for additional updates, including the date and time, related to this public hearing.

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 hearing to run either ahead of schedule or behind schedule. Each commenter will have three minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically by emailing it to UICprimacy@epa.gov. The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket, identified in the **ADDRESSES** section of this proposed rule. The EPA will make every effort to accommodate all speakers who register, although preferences on speaking times may not be able to be fulfilled.

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 comments and supporting information presented at the public hearing.

Updates on the virtual hearing logistics will be posted online at <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program>. Please contact UICprimacy@epa.gov with any questions about the virtual hearing. The EPA does not intend to publish a document in the **Federal Register** announcing updates related to the public hearing. If you require the services of an interpreter or special accommodation such as audio description, please pre-register for the hearing at <https://www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program> and describe your needs at least one week prior to the public hearing date. The EPA may not be able to arrange accommodation without advance notice.

II. Introduction

A. Federal UIC Program and Primary Enforcement Authority (Primacy)

The SDWA protects public health by regulating the nation's public drinking water supply, including both surface and groundwater sources. The SDWA requires the EPA to develop minimum requirements for effective State and Tribal UIC programs to prevent underground injection of fluids (such as water, wastewater, brines from oil and gas production, and carbon dioxide) from endangering underground sources of drinking water (USDWs). In general, USDWs are aquifers or parts of aquifers that supply a public water system or contain enough groundwater to supply a public water system. See 40 CFR 144.3 (defining USDW).

The EPA's UIC program regulates various aspects of an injection well project throughout the lifetime of the project. These regulated aspects include technical elements such as site characterization, construction, operation, and testing and monitoring through site closure. The UIC program also includes well permitting, site inspections, and reporting to ensure well owners and operators comply with UIC permits and regulations.

The SDWA section 1421 directs the EPA to establish requirements that States, territories, and federally recognized Tribes (hereafter referred to as applicants) must meet to be granted primary enforcement responsibility or "primacy" for implementing a UIC program, including a Class VI program. 42 U.S.C. 300h. An applicant seeking primacy under SDWA section 1422 for a Class VI program must demonstrate to the EPA that the applicant's proposed Class VI program meets the Federal requirements for protecting USDWs promulgated by the EPA pursuant to SDWA section 1421. 42 U.S.C. 300h—300h–1. An applicant must demonstrate, among other things, that it has jurisdiction over underground injection and that it possesses the administrative, civil, and criminal enforcement authorities required by the EPA's implementing regulations. See 40 CFR part 145, subpart B. After the EPA approves UIC primacy for a State, the State's UIC program may later be revised with EPA approval. See 40 CFR 145.32.

The EPA comprehensively evaluates each primacy application in accordance with SDWA section 1422 and the EPA's implementing regulations to determine whether the applicant (in this instance, the State of Alaska) has satisfactorily demonstrated that it has adopted and will implement a UIC program that meets applicable regulatory

requirements in 40 CFR parts 144, 145, and 146.

B. Class VI Wells Under the UIC Program

Class VI wells are used to inject carbon dioxide into deep rock formations for long-term underground storage, also known as geologic sequestration. The geologic sequestration of carbon dioxide in UIC Class VI wells is used as part of carbon capture and storage for carbon dioxide emissions from industrial sources. Class VI injection wells are regulated under a SDWA permitting framework that provides multiple safeguards that work together to protect USDWs.

Owners or operators that seek to inject carbon dioxide underground for the purpose of geologic sequestration must demonstrate to the permitting authority that their proposed injection well and injection activities will meet all regulatory requirements and obtain a Class VI permit for each well. The UIC Class VI program requires applicants to meet technical, financial, and managerial requirements to obtain a Class VI permit, including:

- Site characterization to ensure the geology in the project area will contain the carbon dioxide within the zone where it is authorized to be injected.
- Modeling to delineate the predicted area influenced by injection activities through the lifetime of the project.
- Evaluation of the delineated area to ensure all potential pathways for fluid movement outside the authorized injection zone have been identified and addressed through corrective action.
- Well construction requirements that ensure the Class VI injection well will not leak carbon dioxide.
- Testing and monitoring throughout the life of the project, including after carbon dioxide injection has ended. Requirements include, for example, testing to ensure physical integrity of the well, monitoring for seismic activity near the injection site, monitoring of injection pressure and flow, chemical analysis of the carbon dioxide stream that is being injected, and monitoring the extent of the injected carbon dioxide plume and the surrounding area (e.g., groundwater) to ensure the carbon dioxide is contained as predicted.
- Operating requirements (e.g., injection pressure limitations) to ensure the injection activity will not endanger USDWs.
- Financial assurance mechanisms sufficient to cover the costs for all phases of the geologic sequestration project including the post-injection site care period and until site closure has

been approved by the permitting authority.

- An emergency and remedial response plan to protect USDWs.
- Reporting of all testing and monitoring results to the permitting authority to ensure the well is operating in compliance with all permit requirements.

The permitting authority ensures that these protective requirements are included in each Class VI permit. A draft of each Class VI permit is made available to the public for comment before the permitting authority decides whether to issue a final permit.

C. Alaska UIC Program

The State of Alaska received primacy for Class II injection wells under SDWA section 1425 on May 6, 1986 (51 FR 16683 and 16684). On May 22, 2026, Alaska applied to the EPA under SDWA section 1422 for primacy for Class VI injection wells located within the State.

III. Legal Authorities

SDWA section 1421 requires the EPA to promulgate Federal requirements for effective State UIC programs to prevent underground injection activities that endanger USDWs. 42 U.S.C. 300h(b)(1). SDWA section 1422 requires that a State seeking primacy demonstrate to the EPA that it has adopted (after notice and public hearing) and will implement a UIC program that meets the requirements that the EPA promulgated under SDWA section 1421. 42 U.S.C. 300h–1(b)(1)(A)(i). The statutory authority for this proposed rule approving Alaska's UIC Class VI primacy program is SDWA sections 1422 and 1450, 42 U.S.C. 300h–1 and 300j–9.

As directed by the SDWA, the EPA has promulgated regulations setting forth the applicable procedures and substantive requirements for applicants seeking primacy for UIC programs under SDWA section 1422. The regulations in 40 CFR part 144 outline general program requirements that each State must meet to obtain primacy. The regulations in 40 CFR part 145 specify the procedures the EPA will follow in approving, reviewing, and withdrawing State UIC programs, and outlines the elements and provisions that a State must include in its application for primacy. The EPA regulation at 40 CFR part 145 also includes requirements for State UIC permitting procedures (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, and enforcement authority, as well as requirements for sharing information between the EPA and the State. The regulations in 40 CFR part

146 contain the technical criteria and standards applicable to each well class, including Class VI wells.

IV. Alaska's Application for UIC Class VI Primacy

A. Background

On May 22, 2026, Alaska submitted a complete application for primary enforcement responsibility for Class VI wells under the authority of SDWA section 1422. Alaska's UIC primacy application includes a description of the State's proposed UIC Class VI program, copies of all State legal authorities and forms, applicable statutes and regulations, statement of legal authority from Alaska's Attorney General, a summary of Alaska's public participation activities, and a Memorandum of Agreement (MOA) between Alaska and the EPA's Region 10 Administrator. The EPA reviewed the application for completeness and performed a technical and legal evaluation of the application materials to assess and confirm that Alaska's proposed UIC Class VI program meets Federal requirements.

B. Public Participation Activities Conducted by Alaska

In August 2024, AOGCC published notice on its intent to apply for Class VI primacy. In the AOGCC notice, AOGCC also shared that it was considering revising its regulations as a result of House Bill 50 (signed by the Governor on July 31, 2024). House Bill 50 directed AOGCC to regulate carbon storage facilities, including associated wells, within the state. In that notice, AOGCC asked subsurface landowners, industry, and any other interested or affected stakeholders for their ideas and suggestions related to providing an efficient, consistent, cost-effective, and reasonable regulatory framework that incorporates both House Bill 50 and EPA Class VI requirements, before AOGCC began drafting any specific proposed regulations. AOGCC hosted a public hearing on November 7, 2024, in Anchorage, Alaska with the option to participate remotely. No comments were received during the hearing, but six written comments were received. AOGCC responded to each comment and publicly posted its responses. On behalf of AOGCC, the University of Alaska Fairbanks hosted Carbon Storage Townhalls on November 19, 2024, in Fairbanks; on January 3, 2025, in Kenai; on January 22, 2025, in Anchorage; and on March 3, 2025, in Utqiagvik. These town hall events explained carbon capture, use, and storage, and how Alaska's geology and regulatory

framework might allow for carbon storage projects.

On November 25, 2025, AOGCC posted a "Notice of Proposed Changes on Carbon Storage and Underground Injection Control Class VI Wells in the Regulations of the Alaska Oil and Gas Conservation Commission." This notice proposed to adopt changes in Title 20 Chapter 25 of the Alaska Administrative Code, dealing with carbon storage as it relates to Class VI wells and establishing a new Class VI UIC program for Alaska. Additionally, this notice gave the opportunity for written comments to be received by January 13, 2026, as well as the opportunity for a public hearing in Anchorage with the option to participate remotely. On January 13, 2026, AOGCC held a public hearing on the proposed Class VI regulations. AOGCC received one comment during the hearing and six written comments. AOGCC responded to each comment and publicly posted its responses. The State regulatory changes were approved and signed by the Office of the Lieutenant Governor on March 19, 2026, and became effective on April 18, 2026.

Prior to applying for EPA approval of a State UIC program, the State must issue public notice of its intent to do so. In April 2026, AOGCC published notices of its intent to adopt and seek approval of a UIC Class VI program and of a related public hearing. AOGCC published the notice in six Alaska newspapers, through its website, and via email distribution to stakeholders. The notice provided the schedule for the hearing and identified the issues on which AOGCC sought public input. On May 14, 2026, AOGCC hosted an in-person hearing with the option to participate remotely. AOGCC received no comments during the hearing and received two written comments. One comment asserted that AOGCC's final regulations and previous response to comments did not resolve issues raised by the commenter during the comment period for the proposed State regulatory changes. These concerns include that funding is inadequate and uncertain to cover the technical expertise and implementation necessary for a Class VI permitting program; that Alaska's fee-shifting statute and rules discourage citizen oversight lawsuits and undermine key elements of the SDWA; that carbon capture and storage is dangerous, energy-intensive, and ineffective; that Alaska's history of oil and gas safety and environmental oversight and enforcement make adding a new permitting program highly risky; and that AOGCC has the responsibility not to pursue Class VI primacy until it can adequately demonstrate an ability to

effectively administer the Class VI UIC program. The other comment supported Alaska's pursuit for Class VI primacy. AOGCC publicly responded to both comments.

Documentation of Alaska's public participation activities, including comments received and responses by the AOGCC, can be found in the EPA's Docket ID No. EPA-HQ-OW-2026-4588.

C. Summary of the EPA's Comprehensive Evaluation

The EPA evaluates primacy applications in accordance with SDWA section 1422 to determine whether an applicant has satisfactorily demonstrated that it has adopted after reasonable notice and public hearings, and will implement, a UIC program that meets the requirements of 40 CFR parts 144, 145, and 146. 42 U.S.C. 300h-1(b)(1)(A)(i). The EPA conducted a comprehensive technical and legal evaluation of Alaska's primacy application to determine whether the State's proposed UIC Class VI program—including State statutes and regulations, program description, State Attorney General's statement, and MOA—meets the requirements of SDWA section 1422 and EPA regulations. Upon review, the EPA determined that Alaska's primacy application demonstrates that the State has adopted and will implement a UIC Class VI program that meets EPA requirements.

The EPA evaluated Alaska's UIC Class VI program description for consistency with 40 CFR 145.23, which specifies the information that must be included as part of the program description. The EPA's evaluation of the UIC Class VI program description included reviewing the scope, coverage, processes, and organizational structure of the proposed Class VI program. The EPA evaluated Alaska's permitting, administrative, and judicial review procedures relevant to Class VI permits, as well as the State's permit application, reporting, and manifest forms for Class VI permits. The EPA also reviewed the State's UIC compliance evaluation program and enforcement authorities and the State's demonstration that its UIC Class VI program will have adequate in-house staff or access to contractor support for technical areas including site characterization, modeling, well construction and testing, financial responsibility, and regulatory and risk analysis.

The EPA evaluated Alaska's Attorney General's statement related to Class VI for consistency with 40 CFR 145.24. In an Attorney General's statement, the

State's top legal officer affirms that applicable State law (e.g., statutes, regulations, and judicial decisions) provides adequate authority to administer the UIC Class VI program as described in the program description and consistent with the EPA's regulatory requirements for UIC programs.

The EPA determined that the Class VI MOA meets the Federal requirements at 40 CFR 145.25 for primacy MOAs. The MOA is the central agreement that establishes the provisions and arrangements between the State and the EPA concerning the administration, implementation, and enforcement of the State UIC Class VI program. The EPA's evaluation of the Class VI MOA included ensuring that the MOA contained the appropriate provisions pertaining to coordination, permitting, compliance monitoring, enforcement, and EPA oversight. For example, the Class VI MOA specifies that the AOGCC and the EPA agree to maintain a high level of cooperation and coordination to ensure successful and effective administration of the UIC Class VI Program.

Alaska has demonstrated that it meets all UIC permitting requirements found in 40 CFR 145.11 for Class VI permits. Alaska's UIC Class VI permitting provisions and technical criteria and standards meet the Federal requirements in 40 CFR parts 124 and 144 through 146. The State has incorporated necessary procedures, pursuant to 40 CFR 145.12, to support a robust UIC Class VI compliance evaluation program. Additionally, Alaska has the necessary civil, administrative, and criminal enforcement authorities pursuant to 40 CFR 145.13. Alaska's UIC Class VI regulations regarding permitting, inspection, operation, monitoring, reporting, and recordkeeping meet Federal requirements found in 40 CFR parts 145 and 146.

As a result of this comprehensive review, the EPA is proposing to approve Alaska's UIC Class VI program primacy application because the EPA has determined that the application meets all applicable requirements for Class VI primacy approval under SDWA section 1422 and because the State has demonstrated that it will implement a UIC program in a manner consistent with the SDWA and all applicable UIC regulations.

V. The EPA's Proposed Action

A. Incorporation by Reference

The EPA is proposing to approve the State of Alaska's UIC program primacy

application for Class VI injection wells in the State, except for those located within Indian country and those wells located within areas of exclusive Federal jurisdiction. If finalized, this action would amend 40 CFR part 147, subpart C, and incorporate by reference Alaska's EPA-approved statutes and implementing regulations that contain standards, requirements, and procedures applicable to UIC Class VI well owners or operators within the State. Any provisions incorporated by reference, as well as all permit conditions issued pursuant to such provisions, are enforceable by the EPA pursuant to SDWA section 1423. 40 CFR 147.1(e). The EPA would continue to administer the UIC program in Alaska for Class I, III, IV, and V wells and for all well classes within Indian country and within areas of exclusive federal jurisdiction.

The EPA compiled the applicable Alaska statutes and regulations proposed to be incorporated by reference into 40 CFR 147.100 in a document titled "Alaska SDWA § 1422 Underground Injection Control Program Class VI Statutes and Regulations," dated August 26, 2026. This compilation is publicly available at <https://www.regulations.gov> in the EPA's Docket No. EPA-HQ-OW-2026-4855 for this proposed rulemaking. The EPA also proposes to codify a table in 40 CFR 147.100 listing the EPA-approved Alaska Statutes and Regulations for Class VI wells that the EPA would incorporate by reference.

B. The EPA's Oversight

Upon approval, the EPA will oversee Alaska's administration of its Class VI UIC program. The EPA will require quarterly reports on instances of permittee non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The MOA between the EPA Region 10 and AOGCC specifies that the EPA will oversee the State's administration of the UIC Class VI program on a continuing basis to ensure that such administration is consistent with the program MOA, the SDWA and implementing regulations, UIC grant agreements, and other applicable requirements.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at: <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review under Executive Order 12866 because the Office of Management and Budget (OMB) has exempted, as a category, the approval of State UIC programs.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 does not apply because actions that approve State UIC programs are exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action will not impose an 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 2040-0042.

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. This action will not impose any requirements on small entities. This action transfers regulatory authority from the EPA to a State program with substantially the same requirements.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector. The EPA's proposed approval of Alaska's Class VI program will not constitute a Federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a State, rather than a Federal program.

F. Executive Order 13132: Federalism

This action does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive

Order 13175. This action contains no Federal mandates for Tribal governments and does not impose any enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it would approve a State program.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

VII. References

- Attorney General’s Statement “Attorney General’s Statement to Accompany Alaska’s Underground Injection Control Program Class VI Primacy Application,” signed by the Acting Attorney General of Alaska on May 19, 2026.
- Class VI Underground Injection Control Program Description “Alaska Class VI Underground Injection Control 1422 Program Description,” Alaska Oil and Gas Conservation Commission, May 22, 2026.
- Letter from the Governor of Alaska to the Regional Administrator, EPA Region 10, signed on May 21, 2026.
- The Memorandum of Agreement Between the Alaska Oil and Gas Conservation

- Commission and The United States Environmental Protection Agency Region 10 for the UIC Class VI Program.
- State of Alaska Oil and Gas Conservation Commission, “40 CFR 145.22(a)(5) Applicable Alaska Statutes and Regulations,” May 22, 2026.
- State of Alaska Oil and Gas Conservation Commission, “40 CFR 145.22(a)(6) Public Participation Activities,” May 22, 2026.
- U.S. Environmental Protection Agency. Proposed “Alaska SDWA § 1422 Underground Injection Control Program Class VI Statutes and Regulations.” August 26, 2026. Office of Water.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Lee Zeldin,
Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

- 1. The authority citation for part 147 continues to read as follows:
Authority: 42 U.S.C. 300f *et seq.*; and 42 U.S.C. 6901 *et seq.*
- §§ 147.100 through 147.104 [Redesignated as §§ 147.101 through 147.105]
- 2. Redesignate §§ 147.100 through 147.104 as §§ 147.101 through 147.105.
- 3. Add new § 147.100 to read as follows:

§ 147.100 State-administered program—Class VI Wells.

The UIC program for Class VI wells in the State of Alaska, except for those wells located within Indian country and those wells located within areas of exclusive Federal jurisdiction, is the program administered by the Alaska Oil and Gas Conservation Commission approved by EPA pursuant to section

1422 of the Safe Drinking Water Act (SDWA). The effective date of this program is [EFFECTIVE DATE OF THE FINAL RULE]. The UIC program for Class VI wells in the State of Alaska, except those located within Indian country and those wells located within areas of exclusive Federal jurisdiction, consists of the following elements, as submitted to EPA in the State’s program application.

(a) *Incorporation by reference.* The requirements set forth in the State’s statutes and regulations approved by EPA for inclusion in “Alaska SDWA § 1422 Underground Injection Control Program Class VI Statutes and Regulations” dated August 26, 2026, and listed in table 1 to this paragraph (a), are incorporated by reference and made a part of the applicable UIC program under SDWA for the State of Alaska. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(1) This material is available for inspection at the U.S. Environmental Protection Agency (EPA) and at the National Archives and Records Administration (NARA).

(i) Contact the EPA at the:
(A) *EPA Water Docket.* U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004; phone: (202) 566–2426; or
(B) *EPA Region 10 office.* U.S. Environmental Protection Agency, Region 10, [Region 10 contact information]. or [State of Alaska contact information].

(ii) For information on the availability of this material for inspection at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

(2) To obtain the material, contact:
(i) The EPA (see paragraph (a)(1)(i) of this section); or
(ii) The State of Alaska [State of Alaska contact information].

TABLE 1 TO PARAGRAPH (a)—ALASKA SDWA § 1422 UNDERGROUND INJECTION CONTROL PROGRAM CLASS VI STATUTES AND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date
AS 41.06.105–41.06.210 except AS 41.06.140 and AS 41.06.150(b). 20 AAC 25.442; 20 AAC 25.444; 20 AAC 25.990 (79)–(83); 20 AAC 25.1000–1900, Article 9, “Carbon Storage”.	Carbon Storage and Injection. Alaska Administrative Code.	Last amended October 29, 2024. Last amended April 18, 2026.	[DATE OF PUBLICATION OF THE FINAL RULE IN FEDERAL REGISTER]. [DATE OF PUBLICATION OF THE FINAL RULE IN FEDERAL REGISTER].

(b) *Other Laws.* The following statutes and regulations, as effective on March 31, 2002, although not incorporated by reference except for any provisions identified in paragraph (a) of this section, are also part of the approved State-administered UIC program.

(1) Alaska Statutes 31.05.005–31.05.170. Alaska Oil and Gas Conservation Act, as amended on October 29, 2024.

(2) [Reserved]

(c) *Memorandum of Agreement.* The Memorandum of Agreement Between Alaska Oil and Gas Conservation Commission and The United States Environmental Protection Agency Region 10 for the UIC Class VI Program.

(d) *Governor's Letter.* Letter from the Governor of Alaska to the Regional Administrator, EPA Region 10, signed on May 21, 2026.

(e) *Statement of Legal Authority.* “Attorney General’s Statement to Accompany Alaska’s Underground Injection Control Program Class VI Primacy Application”, signed by the Acting Attorney General of Alaska on May 19, 2026.

(f) *Program Description.* The Program Description, “Alaska Class VI Underground Injection Control Program (1422) Description” and any other materials submitted as part of the application or as supplements thereto.

[FR Doc. 2026–22085 Filed 10–28–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 96

RIN 0970–AD49

Reducing Bureaucracy and Burden for Block Grants

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: ACF proposes to amend its block grant regulations to modernize requirements, reduce administrative burden on States and Tribal grantees, and improve the clarity and efficiency of program administration. The current regulations include outdated provisions and procedural requirements that no longer reflect statutory authority or agency practice. The proposed revisions are intended to streamline grantee

obligations, eliminate unnecessary requirements, and align the regulations with current law and policy.

DATES: In order to be considered, written comments on this proposed rule must be received on or before November 30, 2026.

ADDRESSES: You may submit written comments, identified by docket number ACF–2026–0628 and/or RIN number 0970–AD49, by one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* Deregulation@acf.hhs.gov. Include the docket number ACF–2026–0628 and/or RIN number 0970–AD49 in the subject line of the message.

Instructions: All submissions received must include the agency name and docket number or RIN number for this rulemaking. All comments received are a part of the public record and will be posted for public viewing on www.regulations.gov, without change. Please be advised that the substance of the comments and the identity of individuals or entities submitting the comments will be subject to public disclosure.

FOR FURTHER INFORMATION CONTACT:

Adam N. Jones, Deputy Chief of Staff, Immediate Office of the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services, Washington, DC 202–417–0115 or Deregulation@acf.hhs.gov. The docket on <https://www.regulations.gov> will include a plain language summary of the proposed rulemaking.

www.regulations.gov will include a plain language summary of the proposed rulemaking.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by Title XX of the Social Security Act, as amended (42 U.S.C. 1397 *et seq.*), the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*), and the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 *et seq.*), and the Department’s general administrative authority under 5 U.S.C. 301.

II. Background

45 CFR part 96, “Block Grants” is a comprehensive regulatory framework established under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) that governs the administration of multiple federal block grant programs administered by HHS. Originally published on July 6, 1982, this regulation applies to seven major block

grant programs: Community Services Block Grant (CSBG), Preventive Health and Health Services, Community Mental Health Services (MHBG), Substance Use Prevention, Treatment, and Recovery Services (SUBG), Maternal and Child Health Services, Social Services Block Grant (SSBG), and Low-Income Home Energy Assistance Program (LIHEAP).

Part 96 establishes uniform procedures for grant applications, awards, payments, financial management, audit requirements, and enforcement mechanisms across these programs. It includes specific provisions for financial management requirements (Subpart C), direct funding of Indian tribes and tribal organizations (Subpart D), and enforcement procedures including complaint resolution and hearing processes (Subparts E and F). The regulation also contains program-specific requirements for each block grant, such as the SSBG annual reporting requirements using uniform service definitions (Subpart G) and LIHEAP weatherization waivers (Subpart H).

Since its initial promulgation, Part 96 has continuously been amended to reflect statutory changes to the underlying block grant programs. Significant amendments include revisions reflecting the LIHEAP amendments enacted in 1984, 1990 and 1994; revisions reflecting the SSBG reporting changes enacted in 1988; and periodic updates to the program-specific subparts to reflect reauthorizations and conforming amendments to the underlying statutes.

III. Executive Summary

This notice of proposed rulemaking (NPRM) proposes to remove multiple regulations that are either unnecessary or wholly obsolete. The regulations contained in this NPRM to be removed and reserved can be categorized into three groups: those that have obsolete language, those that are duplicative of another Federal regulations or statute, and those that are better suited as a different type of sub-regulatory format.

Several provisions across Part 96 contain transitional language tethered to fiscal years that have long passed. ACF proposes to remove these transitional clauses. The fiscal-year triggers they reference are decades in the past, and the provisions they once activated are now either fully effective by their own terms or entirely inoperative. Retaining this language clutters the Code of Federal Regulations with text that no longer governs any current conduct, creates confusion for grantees attempting to identify their present obligations, and burdens agency staff

who must explain why time-bound language remains on the books.

The duplicative regulations in the Code of Federal Regulations, carry no impact as the authority and requirements stated in the regulations exist or are stated elsewhere, such as in statute. This renders the language found in the regulations to be either duplicative or otherwise unnecessary. ACF proposes to remove these provisions. They add no operative requirement beyond what Congress has already enacted, and their continued presence in part 96 creates a risk that subsequent amendments to the underlying statutes will produce a mismatch between the statutory text and the regulatory paraphrase. Removing these provisions simplifies the regulations without eliminating any substantive obligation, because the statutory provisions remain directly enforceable.

The regulations that are better suited to a different format, *i.e.*, as a sub-regulatory document, are those that generally read like a Frequently Asked Questions document or are overly prescriptive and carry technical details that belong in programmatic instruction. These documents are being proposed to be removed from part 96 and published in the more appropriate format.

Severability

The provisions of this NPRM, once it becomes final, are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid. The changes address a variety of issues relevant to Block Grants. None of the provisions contained herein are central to an overall intent of the proposed rule, nor are any provisions dependent on the validity of other, separate provisions.

IV. Discussion of Proposed Changes

45 CFR Part 96 Block Grants

Subpart B—Grant Procedures

§ 96.10 Prerequisites To Obtain Block Grant Funds

Section 96.10 sets forth prerequisites that States must satisfy to obtain block grant funds, including submission requirements and certifications. Some of these prerequisites track directly to statutory requirements in the individual block grant statutes, while others reflect administrative conditions ACF layered on top of those statutory requirements. In Section 96.10, two clauses indicate that these prerequisites to obtaining block grant funds begin with Fiscal Year

(FY) 2001. The proposed rewrite removes the specific time bounds.

§ 96.14 Time Period for Obligation and Expenditure of Grant Funds

Section 96.14 addresses the treatment of expenditures across program years, including rules governing when obligations incurred in one program year may be charged against another. This proposed rewrite removes Section 96.14(a)(2) as this language that also exists in other areas of this part. *See* 45 CFR 96.81(b)(1). Furthermore, this subsection references specific dates such as “fiscal year 1982” which is now obsolete. The proposed edits to paragraph (b) remove the reference to the community services block grant as having a statutory limit on the time for expenditure of block grant funds. This restricting language is no longer accurate following a congressional change to the statute removing said cap. The regulations have never been updated to reflect this change, but is proposed to be done through this NPRM. Finally, the proposed edits to paragraph (b) add community mental health services, substance use prevention, treatment, and recovery services (the SAMHSA block grants) because the authorizing statute for these block grants imposes a two-year time limit for obligation and expenditure of allotments. These are proposed to be added as they align with statutes that have been passed since the last time this section was updated.

§ 96.15 Waivers

Section 96.15 establishes a regulatory framework for the issuance of waivers under the block grant statutes, including LIHEAP under 42 U.S.C. 8624(k). The proposed change removes reference to the dated FY1986 start to a Secretarial waiver authority.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

§ 96.43 Procedures During FY 1982

Section 96.43 establishes procedures for LIHEAP funds exclusively for FY1982. This section is no longer relevant as all of the dates and processes described therein have been long since passed and are therefore obsolete.

§ 96.49 Due Date for Receipt of All Information Required for Completion of Tribal Applications for the Low-Income Home Energy Assistance Block Grants

Section 96.49 establishes recordkeeping requirements applicable to LIHEAP. The proposed amendment to this section removes the specific dated language that announces the

implementation of the regulation will begin in FY2001.

Subpart G—Social Services Block Grants

§ 96.71 Definitions

Section 96.71 further constricts definitions beyond statutory language for both the term “integral but subordinate” and for “employees.” The term “integral but subordinate” is used in 42 U.S.C. 1397d(a)(2) to restrict the use of funds by a grantee for “the provision of cash payments for costs of subsistence or for the provision of room and board (other than the costs of subsistence during rehabilitation, room and board provided for short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service).” Thus, Congress intended for funds to be allowed to be used for temporary emergency shelter, including room and board, for children in a protective service.

However, Section 96.71 unnecessarily restricts this Congressional definition by stating that, “room and board provided for a short term shall not be considered an integral but subordinate part of a social service when it is provided to an individual in a foster family home.” This was not a condition of Congressionally approved language, but rather an extension of statutory interpretation by agency regulators that does not align with Congressional action. Therefore, the removal of this added provision will return the enforcement of this block grant’s allowable uses to what was intended by the lawmakers. It will not necessarily lead to any changes in how states spend funds but will allow states to leverage the full statutory authority. This will not result in increased costs as this is a capped program but will restore state flexibility to the use of funds.

Additionally, the term “employees” is defined in Section 96.71 as “staff, contractors, or other individuals whose activities are under the professional direction or supervision of the institution.” This is beyond what the plain text definition in the original Act which made no mention of additional supervision or direction. By removing this added regulatory burden, the operation of the program will return to the original Congressional definition. For these reasons, this proposed rule removes this Section.

§ 96.74 Annual Reporting Requirements

Section 96.74 implements the SSBG annual report requirement under 42

U.S.C. 1397e. The proposed changes remove Section 96.74(b)(1), which references uniform definitions of services in Appendix A, which is proposed for removal, and paragraph (c) which discuss outdated terminology and technology such as encouraging the use of “computer diskettes.” References to Appendix A is also removed from Section 96.74(b)(4).

Subpart H—Low-Income Home Energy Assistance Program

§ 96.83 Increase in Maximum Amount That May Be Used for Weatherization and Other Energy-Related Home Repair

Section 96.83 establishes a detailed procedural framework for grantees seeking waivers to increase the percentage of LIHEAP funds used for weatherization activities from 15 percent to up to 25 percent.

ACF proposes to remove the elements of this procedural framework that extends beyond statutory requirements. The underlying statutory waiver authority (42 U.S.C. 8624(k)) is preserved, but the regulatory framework layered on top of that authority represents an agency-created set of procedural prerequisites and substantive criteria that go beyond the best reading of the statute.

Removing the framework restores the Secretary’s statutory discretion to evaluate waiver requests on their merits and reduces administrative burden on grantees with limited deregulatory cost, because the statutory standard for granting a waiver continues to govern the substantive decision. Thus, this Section is proposed to be reduced to remove any requirement that is not mandated by statute.

Subpart I—Community Services Block Grants

§ 96.90 Scope

Section 96.90 briefly introduces that Subpart I applies to CSBG. As the title of the subpart is stated as “Community Services Block Grants” this Section does not provide any additional information or regulatory requirements, and is therefore proposed to be removed.

§ 96.91 Audit Requirement

Section 96.91 discusses the requirements of section 1745(b) of the Reconciliation Act (31 U.S.C. 1243 note) regarding audit requirements, which has been repealed. The CSBG Act sets forth audit requirements at section 678D(a)(2) (42 U.S.C. 9916(a)(2)). Section 96.91 is superseded by the statutory audit requirements and is therefore proposed to be removed.

Appendix A to Part 96

Uniform Definitions of Services

Appendix A to Part 96 identifies the 29 categories of services and provides a brief definition of each service. This Appendix is proposed for removal as it identifies items that HHS believes belong in sub-regulatory guidance as it is merely providing the list of allowable expenditures for a specific grant fund. As grantees are required to follow a grant’s terms and conditions, the removal of this Appendix is not intended or expected to impact the operations of the program.

V. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This NPRM does not contain any information collections requiring OMB approval under the PRA and, therefore, will not create any new paperwork burdens or modify existing burdens subject to OMB review.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This proposed rule would not have substantial direct impact on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NPRM would not pre-empt State law. The changes proposed in the NPRM are removing unnecessary and obsolete regulations from Block Grant rules. Therefore, in accordance with Section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires federal agencies to determine whether a policy or

regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS believes it is not necessary to prepare a family policymaking assessment because the actions proposed in this NPRM will not have any impact on the autonomy or integrity of the family as an institution.

VI. Regulatory Impact Analysis

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. Rules are “significant” under Executive Order 12866 Section 3(f)(1) if they “have an annual effect on the economy of \$100 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.” Executive Order 14192 requires that any new incremental costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.” The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is a significant action under Executive Order 12866 Section 3(f).

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their regulatory proposals on small entities. Because this is simply repealing obsolete and unnecessary language, we propose to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis; identify and consider a reasonable number of regulatory alternatives; and select the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation) in at least one

year by State, local, and tribal governments, in the aggregate, or by the private sector. Each agency issuing a rule with relevant effects over that threshold must also seek input from State, local, and tribal governments. The current threshold after adjustment for inflation is \$193 million, using the most current (2025) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

VII. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian Tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. *Consultation and Coordination With Indian Tribal Governments*, 65 FR 67249. Similarly, ACF's Tribal Consultation Policy says that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one or more Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Given the nature and purpose of this rulemaking, it does not significantly impact Tribes and as such we are not engaging in Tribal Consultation at this time. For Tribes who have comments, we encourage you to submit them through the comment process.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Energy conservation, Grant programs—health, Grant programs—social programs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 96 to read as follows:

PART 96—BLOCK GRANTS

- 1. The authority citation for part 96 is revised to read as follows:

Authority: 31 U.S.C. 7501–7507; 42 U.S.C. 300w *et seq.*, § 300x *et seq.*, § 300y *et seq.*, § 701 *et seq.*, § 8621 *et seq.*, 9901 *et seq.*, § 1397 *et seq.*, 5 U.S.C. 301.

Subpart B—General Procedures

§ 96.10 [Amended]

- 2. Amend § 96.10 by revising paragraphs (c) and (d) to read as follows:

§ 96.10 Prerequisites to obtain block grant funds.

* * * * *

(c) Submission dates for applications under the social service and low-income home energy assistance block grant programs are:

* * * * *

(d) For the low-income home energy assistance program, States and territories which make requests for funding from the Department must insure that all information necessary to complete their applications is received by December 15 of the fiscal year for which they are requesting funds unless the Department agrees to a later date.

§ 96.14 [Amended]

- 3. Amend § 96.14(a) by removing paragraph (2) and by revising paragraph (b) it to read as follows:

(b) Expenditure. No limitations exist on the time for expenditure of block grants funds, except those imposed by statute with respect to the maternal and child health services, community mental health services, substance use prevention, treatment, and recovery services, and the social services block grants.

§ 96.15 [Amended]

- 4. Amend § 96.15 by revising it to read as follows:

§ 96.15 Waivers.

Applications for waivers that are permitted by statute for the block grants should be submitted to the Director, Centers for Disease Control and Prevention in the case of the preventive health and health services block grant; to the Assistant Secretary, Substance Abuse and Mental Health Services Administration in the case of the community mental health services block grant and the substance use prevention, treatment, and recovery services block grant; to the Director, Maternal and Child Health Bureau in the case of the maternal and child health services block grant; and to the Director, Office of Community Services in the case of the community services block grant, the low-income home energy assistance program and the social services block grant.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

§ 96.43 [Removed and reserved]

- 5. Remove and reserve § 96.43.

§ 96.49 [Amended]

- 6. Amend § 96.49 by revising it to read as follows:

§ 96.49 Due date for receipt of all information required for completion of tribal applications for the low-income home energy assistance block grants.

For the low-income home energy assistance program, Indian tribes and tribal organizations that make requests for direct funding from the Department must insure that all information necessary to complete their application is received by December 15 of the fiscal year for which funds are requested, unless the State(s) in which the tribe is located agrees to a later date. After December 15, funds will revert to the State(s) in which the tribe is located, unless the State(s) agrees to a later date. If funds revert to a State, the State is responsible for providing low-income home energy assistance program services to the service population of the tribe.

Subpart G—Social Services Block Grants

§ 96.71 [Removed and reserved]

- 7. Remove and reserve § 96.71.

§ 96.74 [Amended]

- 8. Amend § 96.74 by removing and reserving paragraphs (b)(1) and (c) and amending paragraph (b)(4) to read as follows:

§ 96.74 Annual reporting requirements.

* * * * *

(4) Each state must report “Other Expenditures,” to report non-service expenditures. Only total dollar amounts in this category are required, *i.e.*, they need not be reported by recipient count or cost per adult/child. This will include carry over balances, carry forward balances, funds transferred to or from the SSBG program, and administrative costs as defined by the state.

* * * * *

§ 96.83 [Amended]

- 9. Amend § 96.83 by removing and reserving (a) through (d) and (e)(1)(i) through (e)(1)(iv) and amending paragraph (e) to read as follows:

§ 96.83 Increase in maximum amount that may be used for weatherization and other energy-related home repair.

(e) “Good cause” waiver.

(1) If a grantee does not meet one or more of the criteria for a waiver, then the grantee may submit documentation that demonstrates good cause why a waiver should be granted despite the grantee's failure to meet this criterion

and how such a waiver will still
accomplish the intent of the statute.

(2) * * *

§ 96.90 [Removed and reserved]

- 10. Remove and reserve § 96.90.

§ 96.91 [Removed and reserved]

- 11. Remove and reserve § 96.91.

Appendix A to Part 96 [Removed and reserved]

- 12. Remove and reserve Appendix A to Part 96.

Robert F. Kennedy, Jr.,
Secretary, Department of Health and Human Services.

[FR Doc. 2026–22123 Filed 10–28–26; 8:45 am]

BILLING CODE 4184–01–P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Notice of Request for Approval of a Revision of a Currently Approved Information Collection Request

AGENCY: Office of Homeland Security, Departmental Administration, Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the United States Department of Agriculture (USDA) to request approval for a revision of a currently approved information collection request for the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

DATES: Comments on this notice must be received by December 28, 2026 to be assured of consideration.

ADDRESSES: USDA invites interested persons to submit comments on this notice. Comments may be submitted, identified by OMB Control Number 0509-0001, by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to ATTN: AFIDA, Office of Homeland Security, USDA, 1400 Independence Ave. SW, Room 1457-S, Mail Stop 5050, Washington, DC 20250-3700.

- *Hand- or courier-delivered submittals:* Deliver to ATTN: AFIDA, Office of Homeland Security, USDA, 1400 Independence Ave. SW, Room 1457-S, Mail Stop 5050, Washington, DC 20250-3700. You may also send comments to the Desk Officer for

Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Instructions: All items submitted by mail or electronic mail must include the Agency name and OMB Control Number 0509-0001. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Contact Mr. Matt Allen, Director, USDA Office of Homeland Security, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250, (202) 690-2681.

SUPPLEMENTARY INFORMATION:

Title: AFIDA Report.

OMB Number: 0509-0001.

Expiration Date of Approval: 09/30/2028.

Type of Request: Revision of a currently approved information collection request.

Abstract: AFIDA requires foreign persons who acquire, transfer, or hold interest in U.S. agricultural land to report such transactions to the Secretary of Agriculture on an AFIDA Report (FSA-153). USDA makes reports available to States—as statutorily required—, uses collected information to prepare an annual report to Congress, and makes reports available for public inspection in accordance with regulations that are also statutorily required. The AFIDA statute of authority is 92 STAT (1263-1267) or 7 U.S.C. 3501 *et seq.* or Public Law 95-460. The regulation was promulgated at 7 CFR part 781; however, USDA has proposed updates and is in process of transferring the regulation to a new CFR chapter (7 CFR part 5100) that will supersede 7 CFR part 781. Separate but complementary to the rulemaking process, general oversight of AFIDA authorities was delegated from the Farm Service Agency (FSA) to the Assistant Secretary for Administration (ASA) on April 13, 2026. The proposed rule further codifies subdelegation of authority to the Office of Homeland Security (OHS) which organizationally falls under the ASA. AFIDA regulations were last updated in 2006. Since that time, national security attention to foreign ownership or substantial control of agricultural land has increased.

Committee on Foreign Investment in the United States (CFIUS) agencies, including the U.S. Department of War, use USDA information from AFIDA filings to identify and review transactions that may pose national security risks, such as the location of agricultural land near sensitive military bases. Recent analyses, including a report by the Government Accountability Office (GAO), have identified flaws in USDA's processes for collecting, tracking, and sharing AFIDA data. These deficiencies, combined with evolving national security concerns and a Consolidated Appropriations Act, 2023 requirement for USDA to develop a streamlined process for electronic submission and retention of AFIDA disclosures, led USDA to create an electronic version of the FSA-153 form and update AFIDA regulations through the rulemaking process. USDA invites public input on the modernized changes that would improve information collection activities in a manner responsive to national security.

Under the updated reporting requirements of the proposed rule, USDA will collect additional information from the public through changes to the electronic FSA-153 form (OMB 0509-0001, expiration date 09/30/2028). The changes in the form fall into three general categories: consolidation and reordering certain questions, refinement of certain questions, and the addition of certain questions.

These changes are reflected in the revised electronic FSA-153 form:

- *Item 1, "Reportable Activity"*—This item appears as *Item 1* in the current form but is renamed from "Type of Activity" to "Reportable Activity" to more directly reference the legal responsibility of the filer to report their agricultural activity. Additionally, the proposed rule expands the list of persons that must file an AFIDA report to include: (i) all beneficial owners regardless of nominal share or interest; (ii) any U.S. business with at least 10 percent of its interest held by a foreign person(s), regardless of whether or not the persons act in concert with regard to such interest; (iii) any foreign person holding a lease or easement of 1 year or more; (iv) any foreign adversary or foreign adversary controlled entity holding a lease or easement of any duration; and (v) any foreign person

who holds, acquires, or transfers any interest in the expanded definition of agricultural land, which under the proposed rule includes agricultural industries (organized by NAICS codes) previously absent from the AFIDA regulations and land in conservation that could be used for farming, ranching, forestry, or timber production. Given that the proposed rule would expand the persons and activities requiring an AFIDA report, USDA will modify the list of selectable options under *Item 1* accordingly to include: (i) “Land Holding Newly Reportable under 2026 Update to AFIDA Regulations”; (ii) “Land Acquisition (including Lease or Easement)”; (iii) “Land Transfer”; (iv) “Expiration or Termination of Lease or Easement”; and (v) “Land Use Change to Agriculture.” Once a filer selects an option, subsequent items on the form will only display questions applicable to the selected activity reducing confusion on which fields are required. USDA will remove “Land Use Change to Non-Agriculture” from the list of selectable options since this activity will be captured under a new amendment platform available on the electronic AFIDA portal.

- *Item 2, “Person Information”*—This item appears as *Item 4* in the current FSA-153 but has been moved to *Item 2* since information provided under this item applies to holdings reported in subsequent items of the form. This item contains all the information captured in *Item 4* on the current form as well as new additions. “Limited Liability Company (LLC)” is added to the list of organization types, as many foreign person filers are LLCs and have previously marked the “other” box and wrote in “LLC” for the item indicating “explain.” Additionally, this item now requires all owners to provide “Tax ID Type” and “Tax ID Number” inclusive of all of the following: “Employee Identification Number (EIN)”, “Social Security Number (SSN)”, “Individual Taxpayer Identification Number (ITIN)”, “Foreign Tax Identification Number”, and “Foreign Passport Number”. There will also be a “I do not have a Tax ID” option. We are asking for this ID information as such information ensures the identity of the filers and, consequently, the integrity of their electronic filings. All owners will also need to provide a “Phone Number” and “Email Address”. Lastly, the proposed rule requires that filers provide a full ownership diagram to illustrate the connections between all interest holders in a standardized manner. This requirement expands the previous requirement of filers to provide

ownership details only up to the third tier of ownership. Currently, filers are not asked for this information specifically; rather, they may indicate the “ultimate” foreign interest with a dotted line from the third ownership tier to that “ultimate” or “final” foreign ownership interest on their schematic or listing. Without this diagram, we can only assume that the foreign interest ownership chain ends at the third tier (if no more information is provided); the lack of complete data shared often masks the foreign country(ies) associated in full or in part. This information must be captured in the electronic form to provide an accurate annual report to Congress regarding foreign holdings and to answer national security (and other) questions regarding foreign ownership of U.S. agricultural land. The final rule will provide the final definition of ultimate owner.

- *Item 3, “Land Location and Description”*—This item contains all the information captured in *Item 2* on the current form as well as new additions. This item adds “Legal Mailing Address of the Land (if applicable)” and “Farm Service Agency (FSA) Farm Number (if applicable)” as fields for responses. This item also clarifies that filers can report multiple holdings in multiple states or counties using the updated electronic FSA-153 form. USDA believes this enhancement will allow filers to more easily report several holdings associated with the same transaction and ease the reporting burden for large, complicated transactions. Currently, legal descriptions are the sole method to determine a holding’s location, and their incompleteness and/or outdated descriptions can make it difficult or impossible to determine the actual location of the land prohibiting our ability to determine national security risks. As such, filers will need to use the electronic form’s GIS platform to draw a polygon on the map depicting their holding’s geographic position and delineate within their polygon current land uses by area. The electronic form will provide assistive tools to complete this requirement. Note that filers must continue to provide the legal description of the land, as has always been required.

- *Item 4, “Current Land Use”*—This item replaces *Item 3* on the current form. This item will ask filers to provide the reportable holding’s current land use breakdown by acres. Unlike the previous form, the electronic form will allow filers to search for their specific agricultural industry using a NAICS code lookup. Filers will have the opportunity to add as many NAICS codes as needed to describe their

agricultural operations. Filers will also have the ability to declare “Mixed Use” land—that is, acreage that is being used for greater than one separate activity simultaneously. Last, filers will have the ability to assign acreage to each of the following categories: “Residential”, “Idle”, “Unknown” and “Other.”

- *Item 5, “Intended Land Use”*—This item replaces *Item 8* on the current form. This item will present the same options as described in *Item 4* above but will apply to the filer’s intended land use of the reportable holding. The information captured in *Item 4* and *Item 5* is necessary to provide an accurate annual report to Congress regarding foreign uses of U.S. agricultural land.

- *Item 6, “Type of Interest Held in the Agricultural Land”*—This item contains all the information captured in *Item 5* on the current form as well as new additions. Given the volume of leases reported through AFIDA, this item adds “Lease or Easement” as a selectable option with an embedded question “What is the expected expiration date of the lease or easement?” This item also provides a text box for filers to provide additional information if they select the “Other” option. USDA believes these additional options allow filers to more easily provide specificity that is absent in the current form.

- *Item 7, “How was the Holding Acquired or Transferred?”*—This item contains all the information captured in *Item 6* on the current form as well as new additions. This item adds “Loan/Mortgage Provider” and “Loan/Mortgage ID” as embedded questions under the “Credit or Installment Transaction” option so that filers can provide USDA more information about the credit or installment transaction. This item also provides a text box for filers to provide additional information if they select the “Other” option. Lastly, this item adds two new selectable options to capture unique cases by which a filer may have acquired the holding: “Property Acquired through Merger or Acquisition” and “Auction”.

- *Item 8, “Value of Agricultural Land”*—This item contains all the information captured in *Item 7* on the current form as well as an addition/deletion. USDA has determined that information received by responses to the question “How much of purchase price remains to be paid?” has not been utilized; thus, there is no reason to continue to collect this information. Instead, this item will add “Most recent tax assessed Value at time of submission” as a required question. USDA requires this information to monitor the differences between transaction prices and tax assessed

values, which will be used in calculations of the land's Fair Market Value.

- *Item 9, "Prior Relationship"*—This item replaces *Item 9* and *Item 10* on the current form. This item comprises two questions with "Yes, please explain", "No" or "Unknown" responses: (i) "To the best of your knowledge, did one or more Foreign Persons involved in this transaction have an existing business relationship with the holding's previous owner prior to the activity described in this disclosure?" and (ii) "To the best of your knowledge, was one or more Foreign Persons involved in this transaction involved in the day-to-day operations of the holding prior to the activity described in this disclosure?" The purpose of this information collection is to monitor the origination of transactions subject to AFIDA to enable USDA to fulfill its statutory responsibility to analyze the impacts of foreign land ownership on farms and rural communities.

- *Item 10, "Land Recipient Information (for Land Transfer only)"*—This item only pertains to land dispositions and contains all the information captured in *Item 11* on the current disposition form. This item adds "Phone Number of Person Receiving Tract" and "Email Address of Person Receiving Tract" to ensure that USDA has the relevant contact information to reach out to the recipient on an as-needed basis. This item also adds clarifying language to request the "Country of Organization" of the recipient if it is a business.

- *Item 11, "Additional Holdings"*—This item asks if the filer would like to add multiple holdings to their submission. If so, it redirects them back to *Items 3–10* to fill in information for their additional holding(s). As noted above, USDA believes this ability to add multiple holdings will ease the reporting burden for filers with large, complicated transactions.

- *Item 12, "Representative of Foreign Person"*—This item replicates *Item 12* on the current form asking if the filer is completing the form on behalf of someone else. If the filer selects "Yes", the form asks the filer to "Please explain and provide contact details for the Person on whose behalf you are completing this form." This additional information is needed to ensure that USDA has the correct contact information to directly reach the foreign person on whose behalf the representative is completing the AFIDA report.

- *Item 13, "Certification and Signature"*—This item replicates *Item 13* on the current form.

- *Item 14, "Additional Comments"*—This item replicates *Item 14* on the current form.

- *Item 15, "Additional Attachments"*—This item replicates *Item 15* on the current form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.94 hours per response.

Type of Respondents: Anticipated respondents include foreign persons subject to AFIDA reporting requirements or a third party operating on their behalf. This group includes foreign individuals, foreign governments, foreign-based businesses, and U.S. businesses with foreign ownership. USDA notes that foreign investors that are corporations, LLCs, trusts, and others often hire an attorney or have a corporate employee (also often in the legal field) complete the FSA–153. About 90 percent of individuals who file also rely on an attorney representative. As such, USDA expects legal representatives to file the majority of AFIDA reports on behalf of their clients.

Estimated Number of Respondents: We estimate the number of annual respondents to be 5,438 inclusive of 5,000 respondents submitting a new disclosure and 438 respondents updating existing submissions.

Estimated Number of Responses: We estimate the number of annual responses to be 5,438 since each respondent will submit one electronic FSA–153 form.

Estimated Number of Responses per Respondent: Each respondent submits one response.

Estimated Total Annual Burden on Respondents: We estimate the total annual burden on respondents to be 5,109.5 hours. Currently, USDA estimates that it takes respondents 30 minutes to complete a new AFIDA submission and 15 minutes for updating an existing AFIDA report. USDA estimates that it will take respondents an additional 30 minutes to prepare the GIS map that we propose as a requirement in addition to the current 30 minutes to complete the form for a total of 1 hour per submission. The updated FSA–153 will include additional questions for filers; however, the proposed rule also mandates that filers complete and submit the form electronically via <https://afida.landmark.usda.gov> for greater efficiency. USDA believes these two changes in concert will ultimately be net neutral in the amount of time to complete the form. Summarizing these changes, we estimate the total annual

burden on respondents to be 5,109.5 hours.

Comments are invited on: (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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be submitted electronically or mailed to ATTN: AFIDA, Office of Homeland Security, USDA, 1400 Independence Ave. SW, Room 1457–S, Mail Stop 5050, Washington, DC 20250–3700; (202) 690–2681. All comments received will be available for public inspection during regular business hours at the same address by appointment only.

This is a rule effectuated Paperwork Reduction Act process. Accordingly, any changes made to the final rule based on public comment will be reflected in the final form and certain information fields may be updated as appropriate to ensure alignment with regulations.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Matthew Allen,

Director, USDA Office of Homeland Security.

[FR Doc. 2026–22043 Filed 10–28–26; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Administration

Agency Information Collection Activities: Proposed Collection; Comment Request—The FNA User Access Request Form FNA–674

AGENCY: Food and Nutrition Administration (FNA), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection. This is a revision of a currently approved collection. The purpose of this information collection request is to

continue the use of the electronic form FNA-674, titled "The FNA User Access Request Form." This form will continue to allow access to current FNA systems, modified access or to remove user access.

DATES: Written comments must be received on or before December 28, 2026.

ADDRESSES: Comments may be sent to: Joseph Binns, Food and Nutrition Administration, U.S. Department of Agriculture, 201 14th St. SW, Washington, DC 20228. Comments may also be submitted via email to Joseph.Binns@usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Joseph Binns at 703-605-1181.

SUPPLEMENTARY INFORMATION: Comments are invited 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, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: The FNA User Access Request Form Data Collection.

Form Number: FNA-674.

OMB Number: 0584-0532.

Expiration Date: 08/31/2027.

Type of Request: Revision of a currently approved collection.

Abstract: Form FNA-674 is designed to collect user information required to gain access to FNA Information Systems.

Affected Public: Contractors, State Agencies.

Estimated Number of Respondents: 7,200.

The respondents are State agencies, who are located in the 50 states and Trust Territories, staff contractors and Federal employees. Respondents who require access to the FNA systems are estimated at 8,100 annually (includes Federal, State and private) however, only 7,200 will account for the total public burden, excluding Federal employees. FNA estimates that it will receive an average of 1,185 requests per month (59.25 per business day). Of the 1,185, 92.4 percent (or 1,095) of the responses are State Agency users, 1.3 percent (or 15) are staff contractors and 6.3 percent (or 75) are Federal employees which is not included in the total number of responses. Annually, that results in 7,200 respondents (585 State Agency users per month + 15 staff contractors per month × 12 months).

Estimated Number of Responses per Respondent: 1.975.

Estimated Total Annual Responses: 14,220.

Estimated Time per Response: 0.167 of an hour. Each respondent takes approximately 0.167 of an hour, or 10 minutes, to complete the required information on the online form.

Estimated Total Annual Burden on Respondents: 2,370 hours. See the table below for estimated total annual burden for each type of respondent.

REPORTING BURDEN

Affected public	Form No.	Number of respondents	Number of responses annually per respondent	Total annual responses	Estimate of burden hours per response	Total annual burden hours
Contractors	FNA-674	180	1	180	0.16667 (10 minutes) ..	30
State Agency Users	FNA-674	7,020	2	14,040	0.16667 (10 minutes) ..	2,340
Estimated Total Annual Burden.		7,200		14,220	(0.16667) 10 minutes ..	2,370

Eve Stooddy,
Deputy Administrator, Nutrition Research
and Regulations.

[FR Doc. 2026-22104 Filed 10-28-26; 8:45 am]

BILLING CODE 3410-30-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; Generic Clearance for Conducting Research Into Company Alternative Reporting Options

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 August 1st, 2025 (90 FR, pp. 36129-36131) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Generic Clearance for Conducting Research Into Company Alternative Reporting Options.

OMB Control Number: 0607-NEW.

Form Number(s): None.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: Phase 1: 125. Phase 2: 180. Phase 3: 500.

Average Hours per Response: Phase 1: 1 hour 47 minutes. Phase 2: 1 hour 30 minutes. Phase 3: 3 hours 0 minutes.

Burden Hours: 1,993.

Needs and Uses: Over recent years, the U.S. Census Bureau has faced the challenge of declining response rates across its business surveys. In response, the Census Bureau is actively seeking innovative approaches to ensure the continued collection of critical economic statistics. Such collection

approaches are intended to minimize burden on businesses for reporting to economic surveys and censuses, in alignment with the requirements of the Paperwork Reduction Act (PRA). The U.S. Census Bureau intends to use data collected through alternative approaches in a manner that would maximize utility of the data collected, enhance timeliness of statistical products and improve data consistency, while reducing operational costs and ensuring privacy and confidentiality. As technology continues to advance, the U.S. Census Bureau is evolving its data collection methods to better serve both respondents and the agency.

The Census Bureau requests a new generic clearance to research alternative methods for companies to provide data for business survey(s) and to assess suitability and feasibility of reporting company survey data via alternative data sources, such as submitting non-standard files or automated reporting. In collaboration with the companies that will participate in this research, the Census Bureau hopes to develop and refine these alternative reporting methods, enhance data collection, and reduce reporting burden. These improvements aim to streamline data submission processes for companies, increase data accuracy, and enable the Census Bureau to produce more timely and relevant business statistics.

The U.S. Census Bureau is taking a phased approach to investigate and implement new alternatives for collecting business data. One such measure involves exploring new methods for gathering data directly from businesses, aiming to make it easier for respondents to provide essential information while maintaining the integrity and quality of economic data. Phase 1 focused on determining whether respondents would be willing and able to respond to surveys by submitting non-standard data files directly. During the initial phase of this project, the U.S. Census Bureau has conducted initial discussions with 100–125 companies. The first several companies had existing relationships with the U.S. Census Bureau and were willing to collaborate on this project. Additional companies were selected by survey areas for possible onboarding (e.g., nonrespondents, large complex companies, companies sampled for multiple Census Bureau surveys). Of the 100–125 companies that had initial contact, between 50–70 provided test files for review, and approximately 15–30 companies provided sufficient data to be removed from the standard survey collection process for at least one survey

and provided files that were used in lieu of traditional reporting.

The process for onboarding companies consisted of an initial call or email to set up meetings with the companies to briefly explain the goal of the program. During the meeting, if they expressed interest in pursuing this option, they were asked to send test files that they can easily produce (e.g., Balance Sheets, Income Statements, Trial Balances, roster of business locations) through a secure email system. Those files were reviewed by accountants and subject matter experts, sometimes leading to requests by the Census Bureau for the company to provide additional data items. Once the company provided enough data to satisfy Census requirements, they were approved to report through this method. The company was provided with a Reporting Plan, detailing the files they agree to send, when they will send them, provided points of contact within the company, the surveys for which these data qualify as a response for, and which surveys they still need to complete through traditional methods. Once approved, files were uploaded through a Centurion portal. U.S. Census Bureau team members monitored the Centurion portal and the Reporting Plans to ensure proper compliance and followed up with any companies that did not upload their files by the agreed-upon date. The data files were then provided to the appropriate survey branches within the U.S. Census Bureau, and the data were entered into the individual survey databases. Each year the Reporting Plan will be reviewed, and the company will be contacted if files for subsequent survey years are not received.

In Phase 2, starting in late 2026, the Census Bureau plans to conduct follow-up research to assess the quality of the submitted data, the reporting burden on companies, the ease of file creation, gauge interest in other alternatives such as submitting non-standard data files directly or other types of direct data submission, and the resources required on the part of the U.S. Census Bureau to process these data. This phase of research will focus on understanding the experiences of respondents in Phase 1, evaluating data availability, expansion to other surveys listed below, and exploring potential roadblocks to participation and understanding how to communicate these alternative options effectively to businesses. Concurrently, Census will use the provided data files to develop systems that: automate the extraction of data from the files, format the data to meet our needs, store the

data in databases, and distribute the data to individual surveys.

Phase 3, expected to start in 2027, will apply these research findings by offering additional companies the opportunity to utilize alternative data reporting strategies. This phase aims to facilitate unstructured file uploads via invitation processes like in Phase 1 and/or secure reporting methods on our Centurion platform. If respondents who were contacted in Phase 1 and chose not to participate later express interest during Phases 2 or 3, they will be welcomed to participate. We will follow up with these companies and treat their onboarding and subsequent reporting activities in the same manner as other respondents in those phases.

Additionally, if based on findings in Phase 2 respondents are amenable, we plan to initiate the development of automated data pipelines, allowing companies to transmit information seamlessly from their systems. This will be rolled out along with research exploring additional submission methods to further streamline the process and enhance flexibility for respondents. This multi-step research initiative is expected to progress over the next several years, with ongoing evaluation and adaptation as new insights emerge.

Since the publication of the earlier notice, the scope of the collection effort has expanded beyond solely collecting data through direct transmission. The Census Bureau is exploring multiple alternative collection options, conducting research with respondents to assess the feasibility and effectiveness of these methods, and examining how each approach impacts respondent burden. As new technologies and practices emerge, the Bureau continues to identify and evaluate additional methods, ensuring the process evolves to meet both agency and respondent needs. This expansion via iterative research allows for greater flexibility and innovation in data collection strategies.

The Census Bureau plans to share our insights regarding how we are implementing and using alternative options for company data collection with other federal statistical agencies, such as the Bureau of Labor Statistics and the Bureau of Economic Analysis. By communicating our progress and research outcomes, we aim to provide valuable insights and foster greater understanding across agencies. Importantly, only information about our collection strategy, implementation, and lessons learned will be shared—actual respondent data or individual

submissions will not be disclosed to other agencies.

Our goal is to encourage ongoing dialogue and eventual collaboration on developing alternative response strategies that can benefit businesses and streamline data collection efforts throughout the federal statistical system. At the very least, the Census Bureau plans to share findings across agencies to assist in building similar processes.

The collection of information is necessary to fulfill the statutory requirements and administrative objectives of the Census Bureau's economic survey programs, including the Annual Integrated Economic Survey (AIES), Economic Census, and related surveys. These collections are authorized under Title 13 United States Code, Sections 6, 131, 182, and 193, which mandate the collection and dissemination of economic statistics for the United States. The Census Bureau incorporates these legal authorities in the most recent OMB clearance requests for each survey utilizing company alternative data reporting.

The PRA focuses on maximizing data benefit and utility of collected data. Offering options for businesses to report data via alternative methods may mean that respondents may submit extra data through these non-traditional reporting methods. To ensure compliance with the PRA, the Census Bureau will not explicitly request data items that are not required by the specific survey collections outlined in the relevant statutes and regulations. If respondents choose to provide additional data through these alternative collection methods because it is easier or more efficient for them, the Census Bureau will accept such submissions but only retain information required by authorized survey requirements. If additional data are provided, the Census Bureau will develop protocols filter and retain only the necessary information for statistical purposes.

This approach allows the Census Bureau to minimize reporting burden, maximize the utility of collected data, and maintain strict adherence to legal and administrative mandates governing the collection of economic information.

This clearance will be maintained separately as we continuously and iteratively research alternative ways of collecting data and modernizing data collection and will operate as a generic clearance. Future phases of research will be submitted to OMB for review under this generic clearance.

Frequency: It is expected that participating companies will provide data as often as monthly and at least once annually. The frequency may be

modified to accommodate program requirements and company preferences. This ongoing burden is considered negligible, but it will be documented and tracked as part of future clearance requests.

Respondent's Obligation: Participation in this program is voluntary.

Legal Authority: Title 13 U.S.C. 6, 131, 161, 182 and 193.

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 the title of the collection.

Sheleen Dumas,

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

[FR Doc. 2026–22117 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2025–2026

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from the People's Republic of China (China). The period of review (POR) is February 1, 2025, through January 31, 2026.

DATES: Applicable October 29, 2026.

FOR FURTHER INFORMATION CONTACT: Kabir Archuleta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, Commerce published in the **Federal Register** the AD order on shrimp from China.¹ On March 31, 2026, Commerce published in the **Federal Register** a notice of initiation of administrative review with respect to imports of shrimp from China in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i).² The appendix to this notice lists the exporters and/or producers covered by this review.³ On April 10, 2026, we placed on the record data from the U.S. Customs and Border Protection (CBP) for entries of shrimp from China during the POR, showing no reviewable POR entries and invited interested parties to comment.⁴ Commerce received no comments from any interested parties. In this same memorandum, Commerce notified all interested parties of our intent to rescind the review because there were no reviewable, suspended entries of subject merchandise by any of the companies subject to this review during the POR and invited interested parties to comment.⁵ We did not receive any comments.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review of an AD order where there are no entries of subject merchandise during the POR for which liquidation is suspended. Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD rates calculated for the review period.⁶ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated AD rate for the review period.⁷ As noted above, there were no suspended entries of subject merchandise for any companies subject to this review in the CBP data during the POR. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR for the companies under review, we are hereby rescinding this

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China, 70 FR 5149 (February 1, 2005) (Order).

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 91 FR 15951 (March 31, 2026).

³ See Attachment.

⁴ See Memorandum, "CBP Data Release and Intent to Rescind," dated April 10, 2026.

⁵ *Id.*

⁶ See 19 CFR 351.212(b)(1).

⁷ See 19 CFR 351.213(d)(3).

administrative review in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification Regarding Administrative Protective Order (APO)

This notice 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of the APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 26, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

1. Allied Kinpacific Food (Dalian) Co.
2. Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd./Allied Pacific Food (Dalian) Co., Ltd.*

* Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific (HK) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd; and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. comprise the single entity Allied Pacific. *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958, 18959 (March 28, 2013) (China Shrimp Exclusion). Additionally, this *Order* was revoked with respect to merchandise exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd. *See China Shrimp Exclusion*, 78 FR at 18959.

3. Amoy Food Ltd.
4. Anhui Fuhuang Sungem Foodstuff Group Co., Ltd.
5. Asian Seafoods (Zhanjiang) Co., Ltd.
6. Beihai Anbang Seafood Co., Ltd.
7. Beihai Boston Frozen Food Co., Ltd.
8. Beihai Evergreen Aquatic Product Science and Technology Company Limited
9. Beihai Tianwei Aquatic Food Co. Ltd.
10. Beihai Jiujiajiu Food Co., Ltd.
11. Changli Luquan Aquatic Products Co., Ltd.
12. Chengda Development Co Ltd.
13. Chengdu Yuanxian Food Co., Ltd.
14. Chengsen Aquatic Seafoods Co., Ltd.
15. Colorful Bright Trade Co., Ltd.
16. Dalian Beauty Seafood Company Ltd.
17. Dalian Changfeng Food Co., Ltd.
18. Dalian Guofu Aquatic Products and Food Co., Ltd.
19. Dalian Haiqing Food Co., Ltd.
20. Dalian Hengtai Foods Co., Ltd.
21. Dalian Home Sea International Trading Co., Ltd.
22. Dalian Honghefeng International Trade Co., Ltd.
23. Dalian Jinfuda Business And Trade C
24. Dalian Philica International Trade Co., Ltd.
25. Dalian Rich Enterprise Group Co., Ltd.
26. Dalian Rich Foods Co., Ltd.
27. Dalian Shanhai Seafood Co., Ltd.
28. Dalian Sunrise Foodstuffs Co., Ltd.
29. Dalian Taiyang Aquatic Products Co., Ltd.
30. Dalian Zhuohong Marine Product Co., Ltd.
31. Dandong Taihong Foodstuff Co., Ltd.
32. Dongwei Aquatic Products (Zhangzhou) Co., Ltd.
33. Fastgrow International Co., Inc.
34. Ferrero Food (Hangzhou) Co., Ltd.
35. Foshan Runlin Trading Co., Ltd.
36. Fujian Chaohui Group
37. Fujian Chaowei International Trading
38. Fujian Dongshan County Shunfa Aquatic Product Co., Ltd
39. Fujian Dongshan County Shunyuan Aquatic Product Co., Ltd.
40. Fujian Dongshan Global Seafoods Co., Ltd.
41. Fujian Dongwei Food Co., Ltd.
42. Fujian Dongya Aquatic Products Co., Ltd.
43. Fujian Fuding Seagull Fishing Food Co., Ltd.
44. Fujian Haihun Aquatic Product Company
45. Fujian Hainason Trading Co., Ltd.
46. Fujian Jiafeng Agricultural Development Co., Ltd.
47. Fujian Jinhang Aquatic Product Co., Ltd.
48. Fujian Min Tong Wan Hai Fishery
49. Fujian R & J Group Ltd.
50. Fujian Rongjiang Import and Export Co., Ltd.
51. Fujian Yida Foods Co., Ltd.
52. Fujian Yilong Food Co., Ltd.
53. Fujian Zhaoan Haili Aquatic Co., Ltd.
54. Fuqing Chaohui Aquatic Food Co., Ltd.
55. Fuqing Dongwei Aquatic Products Industry Co., Ltd.
56. Fuqing Longhua Aquatic Food Co., Ltd
57. Fuqing Minhua Trade Co., Ltd.
58. Fuqing Yihua Aquatic Food Co., Ltd.
59. Fuzhou Changle Weiming Trade Company
60. Fuzhou Shuixi Food Inc.
61. Gallant Ocean Group
62. Guangdong Evergreen Aquatic Food Co., Ltd.
63. Guangdong Foodstuffs Import & Export (Group) Corporation
64. Guangdong Gourmet Aquatic Products Co., Ltd.
65. Guangdong Jinhang Foods Co., Ltd.
66. Guangdong Jinxi Dian Food Co., Ltd
67. Guangdong Longze Food Co.
68. Guangdong Rainbow Aquatic Development
69. Guangdong Savvy Seafood Inc.
70. Guangdong Shunxin Marine Fishery Group Co., Ltd.
71. Guangdong Universal Aquatic Food Co. Ltd.
72. Guangdong Wanshida Holding Corp.
73. Guangdong Wanya Foods Pty. Co., Ltd.
74. Guolian Aquatic Products Co., Ltd.
75. HaiLi Aquatic Product Co., Ltd
76. Hainan Brich Aquatic Products Co., Ltd.
77. Hainan Dragon Link Trading Co., Ltd.
78. Hainan Golden Spring Foods Co., Ltd.
79. Hainan Qinfu Foods Co., Ltd.
80. Xintaisheng Industry Co., Ltd.
81. Hong Kong Sungiven International Food
82. Huayang International Transportation Service (Dalian) Co., Ltd.
83. Huazhou Xinhai Aquatic Products Co. Ltd.
84. Hubei Lideyuan Agricultural Science And Technology Co., Ltd.
85. Jiangmen Ziqiao Food Ltd.
86. Jiangsu Asus Food Co., Ltd.
87. Kuehne Nagel Ltd. Xiamen Branch
88. Kyorin Industry (Shenzhen) Co., Ltd.
89. Leizhou Bei Bu Wan Sea Products Co., Ltd.
90. Lianyungang Ajinomoto Frozen Foods Co., Ltd.
91. Longhai Gelin Foods Co., Ltd.
92. Maoming Hongye Aquatic Products Co., Ltd.
93. Maoming Xinzhou Seafood Co., Ltd.
94. Marine Harvest International
95. New Continent Foods Co., Ltd.
96. Ningbo Prolar Global Co., Ltd.
97. North Seafood Group Co. Omeca (Liaoning) Food Co., Ltd.
98. Pacific Andes Food Ltd.
99. Penglai Huiyang Foodstuff Co., Ltd.
100. Penglai Yuming Foodstuff Co., Ltd.
101. Qingdao Best Oceans Co., Ltd.
102. Qingdao Fusheng Foodstuffs Co., Ltd.
103. Qingdao Tanford Foods Co., Ltd.
104. Qingdao Yihexing Foods Co., Ltd.
105. Qingdao Yize Food Co., Ltd.
106. Qingdao Zhixian Food Co., Ltd.
107. Qingdao Zhongfu International
108. Qinhuangdao Gangwan Aquatic Products Co., Ltd.
109. Quanzhou Liangyou Food Co., Ltd.
110. Raoping YuXiang Aquaculture Co., Ltd.
111. Rizhao Huasheng Aquatic Foodstuff
112. Rizhao Jia Tian Xia Foods Co., Ltd.
113. Rizhao Kunyu Food Co. Ltd.
114. Rizhao Meijia Aquatic Foodstuff Co., Ltd.
115. Rizhao Meijia Keyuan Foods Co. Ltd.
116. Rizhao Rongjin Aquatic
117. Rizhao Rongxing Co. Ltd.
118. Rizhao Smart Foods Company Limited
119. Rongcheng Heyue Ocean Seafood Co., Ltd.
120. Rongcheng Sanyue Foodstuff Co., Ltd.
121. Rongcheng Yin Hai Aquatic Product Co.,

- Ltd.
 122. Rudong Zhengxiong Trade Co., Ltd.
 123. Ruian Huasheng Aquatic Products
 124. Rushan Chunjiangyuan Foodstuffs Co., Ltd.
 125. Rushan Hengbo Aquatic Products Co., Ltd.
 126. Rushan Huaxin Foodstuffs Co., Ltd.
 127. Savvy Seafood Inc.
 128. Sea Trade International Inc.
 129. Shandong Mingbang Food Co., Ltd.
 130. Shandong Tongxing Foodstuffs Co., Ltd.
 131. Shanghai Finigate Integrated
 132. Shanghai Zhoulian Foods Co., Ltd.
 133. Shantou Freezing Aquatic Product Foodstuffs Co.
 134. Shantou Haili Aquatic Product Co. Ltd.
 135. Shantou Haimao Foodstuff Factory Co., Ltd.
 136. Shantou Jiazhou Food Industrial Co., Ltd.
 137. Shantou Jinping Oceanstar Business Co., Ltd.
 138. Shantou Jintai Aquatic Product Industrial Co., Ltd.
 139. Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.
 140. Shantou Ocean Best Seafood Corporation
 141. Shantou Red Garden Food Processing Co., Ltd./Shantou Red Garden Foodstuff Co., Ltd.⁹
 142. Shantou Ruiyuan Industry Co., Ltd.
 143. Shantou Wanya Foods Pty. Co., Ltd.
 144. Shantou Yuexing Enterprise Company
 145. Shanwei Cathay Food Industries Limited
 146. Shaoxing City Donghai Food Co., Ltd.
 147. Shengyuan Aquatic Food Co., Ltd.
 148. Shenzhen Watson Trading Corp
 149. Sk Seafood Limited
 150. Suizhong Tieshan Food Co., Ltd.
 151. Tianjin Ding Yuelong International
 152. Thai Royal Frozen Food Zhanjiang Co., Ltd.
 153. Time Seafood (Dalian) Company Limited
 154. Tongwei Hainan Aquatic Products Co., Ltd.
 155. Weifang Anjing Aquaculture Dev. Co
 156. Winner Food Products Ltd.
 157. Wuhan Best Lucky Foods Co., Ltd.
 158. Xiamen Chaoyang Trade Co., Ltd.
 159. Xiamen East Ocean Foods Co., Ltd.
 160. Xiamen Golden Huanan Imp. & Exp. Xiamen Granda Import and Export Co., Ltd.
 161. Xiamen Lixing Imp. & Exp. Co. Ltd.
 162. Yangjiang Dawu Aquatic Products Co., Ltd.
 163. Yangjiang Guolian Seafood Co., Ltd.
 164. Yangjiang Haina Datong Trading Co.
 165. Yantai Longda Foodstuffs Co., Ltd.
 166. Yantai Tedfoods Co., Ltd.
 167. Yantai Wei-Cheng Food Co., Ltd.
 168. Yixing Magnolia Garment Co., Ltd.
 169. Zhangzhou Donghao Seafoods Co., Ltd.
 170. Zhangzhou Fuzhiyuan Food Co., Ltd.

171. Zhangzhou Hongwei Foods Co., Ltd.
 172. Zhangzhou Tai Yi Import & Export Trading Co., Ltd.
 173. Zhangzhou Xinhui Foods Co., Ltd.
 174. Zhangzhou Xinwanya Aquatic Product Co., Ltd.
 175. Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.
 176. Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
 177. Zhanjiang Fuchang Aquatic Products Co., Ltd.
 178. Zhanjiang Fuchang Aquatic Products Freezing Plant
 179. Zhanjiang Go-Harvest Aquatic Products Co., Ltd.
 180. Zhanjiang Guolian Aquatic Products Co., Ltd.¹⁰
 181. Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
 182. Zhanjiang Regal Integrated Marine Resources Co., Ltd.¹¹
 183. Zhanjiang Universal Seafood Corp.
 184. Zhanjiang Weipinwei Aquatic Product
 185. Zhaoan Yangli Aquatic Co., Ltd.
 186. Zhejiang Evernew Seafood Co.
 187. Zhejiang Tianhe Aquatic Products
 188. Zhengxiong (Rudong) Trade Co., Ltd.
 189. Zhenye Aquatic (Huilong) Ltd.
 190. Zhoushan City Shengtai Aqu
 191. Zhoushan Dongyu Foods Co., Ltd.
 192. Zhoushan Genho Food Co., Ltd.
 193. Zhoushan Green Food Co., Ltd.
 194. Zhoushan Haiwang Seafood Co., Ltd.
 195. Zhoushan Haizhou Aquatic Products
 196. Zhoushan Haohai Aquatic Products Co.
 197. Zhuanghe Yongchun Marine Products
 198. Zhuhai Doumen Baole Food and Beverage Co., Ltd.
 199.

[FR Doc. 2026–22032 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment Pursuant to the Softwood Lumber Act of 2008

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) seeks public

¹⁰ This *Order* was revoked with respect to subject merchandise produced and exported by Zhanjiang Guolian Aquatic Products Co., Ltd. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 70 FR 5149, 5152 (February 1, 2005).

¹¹ This *Order* was revoked with respect to subject merchandise produced and exported by Zhanjiang Regal Integrated Marine Resources Co., Ltd. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Review*; 2011–2012, 78 FR 56209, 56210 (September 12, 2013).

comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1, 2026, through June 30, 2026. Pursuant to section 809(b) of title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

DATES: Comments must be submitted by November 30, 2026.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>, Docket No. ITA–2026–0100. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

All comments should be addressed to Scot Fullerton, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Brendan Santschi, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4141.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 809(b) of title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report to the Congress on June 30, 2026.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at

⁹ Shantou Red Garden Food Processing Co., Ltd., and Shantou Red Garden Foodstuff Co., Ltd., comprise the single entity Shantou Red Garden Foods. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2018–2019, 85 FR 83891 (December 23, 2020).

least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4407.1100, 4407.1200, 4407.1300, 4407.1400, and 4407.1900, during the period January 1, 2026, through June 30, 2026. Official U.S. import data, published by the United States International Trade Commission's DataWeb, indicate that four countries (Brazil, Canada, Germany, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we intend to rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1, 2026, through December 31, 2026, to select the countries subject for the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the General Agreements on Tariffs and Trade 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.¹

Parties should include in their comments: (1) the country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Dated: October 26, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–22102 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–126, C–570–127]

Non-Refillable Steel Cylinders From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on non-refillable steel cylinders from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable October 14, 2026.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2021, Commerce published in the **Federal Register** the AD and CVD orders on non-refillable steel cylinders from China.¹ On April 1, 2026, the ITC instituted,² and Commerce initiated,³ the first sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.⁴

¹ See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty and Countervailing Duty Orders*, 86 FR 25839 (May 11, 2021) (*Orders*).

² See *Non-Refillable Steel Cylinders from China; Institution of Five-Year Reviews*, 91 FR 16220 (April 1, 2026).

³ See *Initiation of Five-Year (Sunset) Reviews*, 91 FR 16181 (April 1, 2026).

⁴ See *Certain Non-Refillable Steel Cylinders from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping*

On October 14, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Order

The scope of the *Orders* covers certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by these *Orders*.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to these *Orders* is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S.

Duty Order, 91 FR 44823 (July 17, 2026), and accompanying Issues and Decision Memorandum (IDM); see also *Non-Refillable Steel Cylinders from the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order*, 91 FR 49422 (August 4, 2026) and accompanying IDM.

⁵ See *Non-Refillable Steel Cylinders from China; Determinations*, 91 FR 65253 (October 14, 2026).

¹ See section 771(5)(B) of the Tariff Act of 1930, as amended.

Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be October 14, 2026.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act, and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: October 26, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–22024 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Comments must be submitted by December 31, 2026.

ADDRESSES: The U.S. Department of Commerce (Commerce) encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing. All comments must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>, Docket No. ITA–2020–0005. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only. All comments should be addressed to Scot Fullerton, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Walter Ankner, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–8374.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2026, pursuant to section 702(h) of the Trade Agreements Act of 1979, as amended (the Act), Commerce published the quarterly update to the annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period January 1, 2026, through March 31, 2026.¹ In the *First Quarter 2026 Update*, we requested that any party that had information on foreign government subsidy programs that benefited articles of cheese subject to an in-quota rate of duty submit such information to Commerce.² We received no comments, information, or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce's update of subsidies on articles of cheese that were imported during the period April 1, 2026, through June 30, 2026. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

Notification to Interested Parties

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 26, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross ³ subsidy (\$/lb.)	Net ⁴ subsidy (\$/lb.)
27 European Union Member States ⁵	European Union Restitution Payments	\$0.00	\$0.00
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Norway	Indirect (Milk) Subsidy <i>Consumer Subsidy</i>	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

³ Defined in 19 U.S.C. 1677(5).

⁴ Defined in 19 U.S.C. 1677(6).

⁵ The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

⁶ *Id.*

¹ See *Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese*

Subject to an In-Quota Rate of Duty, 91 FR 52289 (August 13, 2026) (*First Quarter 2026 Update*).

² *Id.*

[FR Doc. 2026–22103 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XG101]****New England Fishery Management Council; Public Meeting**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Recreational Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, November 12, 2026 at 1:30 p.m. EST Webinar registration URL information: <https://nefmc-rg.zoom.us/j/7666666666>

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O’Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Groundfish Recreational Advisory Panel will receive an overview refresher of the recreation demand model and decision support tool used to develop recreational measures for Western Gulf of Maine cod and Gulf of Maine haddock from NOAA Fisheries staff. They will also receive an overview of the data from NOAA Fisheries staff and discuss recreational fishing data for fishing year 2025 and preliminary fishing year 2026. The Panel will receive an update on the development of Framework Adjustment 74/ Specifications and Management Measures, review draft alternatives, and recommend preferred alternatives to the Groundfish Committee. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those

issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council’s intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O’Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: October 27, 2026.

Anna Michelle Harrison,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–22107 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XG143]****Marine Mammals; File No. 29915**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; withdrawal of application.

SUMMARY: Notice is hereby given that BBC Natural History and Factual Productions Ltd., Bridgewater House, Counterslip, Redcliffe, Bristol BS1 6BX (Responsible Party: Briony Jones), has withdrawn their application for a permit to conduct commercial and educational photography on marine mammals.

ADDRESSES: The application and related documents are available for review upon written request via email to NMFS.Pr1Comments@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Sara Young, or Shasta McClenahan, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: On September 8, 2026, notice was published in the **Federal Register** (91 FR 57136) that a request for a permit to conduct filming of marine mammals

had been submitted by the above-named applicant. The applicant has withdrawn the application from further consideration.

Dated: October 27, 2026.

Larissa Plants,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026–22084 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XG155]****Gulf Fishery Management Council; Public Meeting**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf Fishery Management Council (Gulf Council) will hold a 1 day in-person meeting of its Ecosystem Technical Committee (ETC).

DATES: The meeting will be held Thursday, December 3, 2026, 8:30 a.m.–4:30 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will take place at the Gulf Council’s office. Registration information will be available on the Council’s website by visiting <https://www.gulfcouncil.org> and clicking on the ETC meeting on the calendar.

Council address: Gulf Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Verena Wang, Ecosystem Analyst, Gulf Council; verena.wang@gulfcouncil.org, (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Thursday, December 3, 2026, 8:30 a.m.–4:30 p.m., EST

The meeting will begin with introductions of members, adoption of agenda, approval of minutes from the March 2026 meeting and scope of work. The Committee will review the preliminary results of the project to Identify Stakeholder-Driven Fishery Ecosystem Issues, discuss the Red Tide Pilot Fishery Ecosystem Issue and receive an update on the Gulf Ecosystem Status Report, including presentations, draft documents, and background materials.

Lastly, the committee will receive public comment and discuss any other business items.

—Meeting Adjourns

The meeting will also be broadcast via webinar. You may register for the webinar by visiting <https://www.gulfcouncil.org> and clicking on the Technical Committee meeting on the calendar. The agenda is subject to change, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not on the agenda may come before the Technical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Technical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 26, 2026.

Anna Michelle Harrison,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026-22033 Filed 10-28-26; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF849]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the PetroMarine Services Juneau Rock Dump Terminal Reconstruction Project in Juneau, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to PetroMarine Services (PM) to incidentally harass marine mammals incidental to Juneau International Airport (JNU) Rock Dump Fuel Terminal Reconstruction Project in Juneau, Alaska (AK).

DATES: This IHA is effective from October 26, 2026, through October 25, 2027.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

MMPA Background and Determinations

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS shall issue an IHA if it finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least [practicable] adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation”). NMFS must also prescribe requirements pertaining to the monitoring and reporting of such takings. The definitions of key terms, such as “take,” “harassment,” and “negligible impact,” are found in the MMPA and NMFS’ implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

On September 10, 2026, NMFS’ proposal to issue an IHA to PM for take of marine mammals incidental to the JNU Rock Dump Fuel Terminal Reconstruction Project in Juneau, AK, was published in the **Federal Register** (91 FR 57550). In that notice, NMFS

provided estimates of the numbers, types, and methods of incidental take proposed for each species or stock, as well as the mitigation, monitoring, and reporting measures that would be required should the IHA be issued. The **Federal Register** notice also included an analysis to support NMFS’ preliminary conclusions and determinations that the IHA, if issued, would satisfy the requirements of section 101(a)(5)(D) of the MMPA for issuance of the IHA. The **Federal Register** notice included web links to a draft IHA for review, as well as other supporting documents.

No substantive comments were received during the public comment period. There are no changes to the specified activity, the species taken, the proposed numbers, type, or methods of take, or the mitigation, monitoring, or reporting measures in the proposed IHA notice. No new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHA notice has become available since that notice was published, and therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHA are considered final.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS

consults internally whenever we propose to authorize take for ESA-listed species, in this case with the NMFS Alaska Regional Office (AKRO).

There is one marine mammal species, the Western DPS Steller sea lion, with confirmed occurrence in the project area that is listed under the ESA. The NMFS AKRO issued a Biological Opinion on October 22, 2026, under section 7 of the ESA, on the issuance of an IHA modification to PM under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of the Western DPS stock of Steller sea lion.

Authorization

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued an IHA to PM for authorization to take marine mammals incidental to the JNU Rock Dump Fuel Terminal Reconstruction Project in Juneau, AK.

Dated: October 27, 2026.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2026–22046 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG136]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification; availability of an evaluation and recommended determination.

SUMMARY: Notice is hereby given that NMFS received three Hatchery and Genetic Management Plans (HGMPs) for hatchery programs rearing and releasing fall-run chum salmon in the Skagit River basin. The plans describe hatchery programs operated by the Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and Washington Department of Fish and Wildlife (WDFW), as co-managers. Following the public comment period, and consistent with the rule for salmon and steelhead, this document serves to notify the public of the availability of an Evaluation and Recommended

Determination document (ERD) on implementing the proposed hatchery programs the associated HGMPs, which concludes that it will not appreciably reduce the likelihood of survival and recovery nor modify or destroy critical habitat of Puget Sound Chinook salmon or Puget Sound steelhead.

ADDRESSES: The document is available on the internet at: <https://www.fisheries.noaa.gov/resource/document/three-hatchery-and-genetic-management-plans-skagit-river-watershed-chum-salmon>.

FOR FURTHER INFORMATION CONTACT:

Morgan Robinson, (253) 307–2670, morgan.robinson@noaa.gov.

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally and artificially propagated;
- Puget Sound Steelhead (*O. mykiss*): threatened, naturally and artificially propagated.

Background

The term “take” is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The ESA prohibits the take of endangered salmonids and, pursuant to ESA section 4(d), ESA regulations can be extended to prohibit the take of threatened salmonids. However, NMFS may make exceptions to the take prohibitions for hatchery programs that are approved by NMFS under the limits on the prohibitions outlined in 50 CFR 223.203(b). The operators, the Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and WDFW, have submitted three HGMPs to NMFS pursuant to NMFS’ limit 6 of the 4(d) rule of the ESA for hatchery activities in the Skagit River basin, Washington. As required in the Endangered Species Act (ESA) rule for salmon and steelhead, the Secretary of Commerce published notice of NMFS’ proposed evaluation and pending determination (PEPD) together with a discussion of the biological analysis underlying that determination. NMFS received one public comment on that PEPD. The ERD is NMFS’ determination for how the HGMPs address the criteria in 50 CFR 223.203(b)(5).

The hatchery programs are designed to contribute to tribal and non-tribal fisheries. These hatchery programs are intended to contribute to fulfilling Federal trust responsibilities toward

Tribes with rights guaranteed through treaties, as affirmed in *United States v. Washington* (1974), by contributing to salmon harvests. Included in the HGMPs is monitoring activities to evaluate the effectiveness of the programs in meeting their goals while limiting impacts to Puget Sound Chinook salmon and Puget Sound steelhead.

Classification

Under section 4 of the ESA, the Secretary of Commerce may issue regulations for the conservation of listed threatened species. The ESA salmon and steelhead 4(d) rule (50 CFR 223.203(b)) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a plan developed jointly by a state and a tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*

Dated: October 26, 2026.

Jennifer Leigh Quan,

*Regional Administrator, West Coast Region,
National Marine Fisheries Service.*

[FR Doc. 2026–22071 Filed 10–28–26; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Appointment of Individuals To Serve as Members of the Performance Review Board

ACTION: Notice.

SUMMARY: Appointment of individuals to serve as members of the Performance Review Board.

DATES: *Applicable Date:* These appointments are effective on November 17, 2025.

FOR FURTHER INFORMATION CONTACT:

Amy B. Jensen, Deputy Executive Director, U.S. AbilityOne Commission; ajensen@abilityone.gov; 703–593–9411.

SUPPLEMENTARY INFORMATION: The Chairperson of the Committee for Purchase From People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission, has appointed the following individuals to serve on the Commission’s Performance Review Board (PRB):

Chairperson of the PRB: Jennifer Sheehy
Member—Matt Beebe
Member—Virna Winters

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Michael R. Jurkowski,
Director, Business Operations.

[FR Doc. 2026-22100 Filed 10-28-26; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date Added to and Deleted From the Procurement List:* November 29, 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:

Additions

On June 18, 2026, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. (91 FR 36809). The Committee determined that the service listed below is suitable for procurement by the Federal Government and has added this service to the Procurement List as a mandatory purchase for the contracting activity listed. In accordance with 41 CFR 51-5.3(b), the mandatory purchase requirement is limited to the contracting activity at the location listed, and in accordance with 41 CFR 51-5.2, the Committee has authorized the nonprofit agency listed as the authorized source of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

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 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 service(s) added to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Grounds Maintenance
Mandatory For: US Air Force, Eglin Air Force Base, Eglin AFB, FL, 308 West D Ave., Suite 130, Eglin AFB, FL
Authorized Source of Supply: Pride Industries, Roseville, CA
Contracting Activity: DEPT OF DEFENSE, FA2823 AFTC PZIO

Deletions

On September 17, 2026 (91 FR 58853), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. The Committee received one comment but did not see the comment until after posting the Notice of final deletion in the **Federal Register** on October 22, 2026 (91 FR 66689). The commenter suggested that prior to proposing services for PL deletion the Commission should evaluate various employment-related consequences for individuals who are blind or have a significant disability. This service was proposed for deletion under 41 CFR 51-6.8(b) because the Government agency was no longer procuring the service. As a result, further evaluation on potential employment impacts is neither required nor warranted.

On September 24, 2026 (9/24/2026), 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) 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) 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) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 8970-00-082-5665—Food Packet, Survival, General Purpose

Authorized Source of Supply: NEWVIEW Oklahoma, Inc., Oklahoma City, OK

Contracting Activity: DEPT OF DEFENSE, DLA TROOP SUPPORT

NSN(s)—Product Name(s): 7025-00-NIB-0012—Promotional Item, Navy, USB Drive, 2 GB, Submarine

Authorized Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: DEPT OF DEFENSE, NAVSUP FLT LOG CTR NORFOLK

NSN(s)—Product Name(s):

6530-01-247-7157—Handle, Litter, Pole

6530-00-784-4335—Strap, Webbing, Litter Securing

6530-00-784-3450—Spreader Bar and Stirrups, Litter

6530-00-784-1250—Cover, Litter

Contracting Activity: DEPT OF DEFENSE, DLA TROOP SUPPORT

NSN(s)—Product Name(s): 4210-01-387-1392—Rake, Collapsible, Forest Fire

Authorized Source of Supply: BESTWORK INDUSTRIES FOR THE BLIND, INC., Cherry Hill, NJ

Contracting Activity: DEPT OF DEFENSE, DLA TROOP SUPPORT

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-22099 Filed 10-28-26; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0103, Ownership and Control Reports, Forms 102/102S, 40/40S, and 71 (Trader and Account Identification Reports)

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be submitted within 30 days of this notice's publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the website's search function. Comments can be entered electronically by clicking on the "comment" button next to the information collection on the "OIRA Information Collections Under Review" page, or the "View ICR—Agency Submission" page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the "Commission" or "CFTC") by any of the following methods:

- *Regulations.gov:* Go to <https://www.regulations.gov> and press the "Search" button, then proceed as follows:

1. Under Refine Documents Results—check the box to "Only show documents open for comment";

2. Under Agency—select "See More" and check the box for "Commodity Futures Trading Commission," then press the Apply button;

3. Identify this proposal in the list of CFTC documents open for comment, press the "Comment" button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on www.federalregister.gov, click the "Submit A Public Comment" button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Paul Chaffin, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418-5185; pchaffin@cftc.gov, and refer to OMB Control No. 3038-0103.

SUPPLEMENTARY INFORMATION:

Title: Ownership and Control Reports, Forms 102/102S, 40/40S, and 71 (Trader and Account Identification Reports) (OMB Control No. 3038-0103). This is a request for extension of a currently approved information collection.

Abstract: The final rules¹ created new information collection requirements via

¹ See Final Rule, *Ownership and Control Reports, Forms 102/102S, 40/40S, and 71*, 78 FR 69178

§§ 17.01, 18.04, 18.05, and 20.5.

Specifically, § 17.01 provides for the filing of Form 102A, Form 102B and Form 71, as follows:

- Pursuant to § 17.01(a), futures commission merchants (“FCMs”), clearing members, and foreign brokers shall identify new special accounts to the Commission on Form 102A;
- Pursuant to § 17.01(b), clearing members shall identify volume threshold accounts to the Commission on Form 102B; and
- Pursuant to § 17.01(c), omnibus volume threshold account originators and omnibus reportable sub-account originators shall identify reportable subaccounts to the Commission on Form 71 when requested via a special call by the Commission or its designee.

Additional reporting requirements arise from § 18.04, which results in the collection of information via Form 40 from and regarding traders who own, hold, or control reportable positions; volume threshold account controllers; persons who own volume threshold accounts; reportable sub-account controllers; and persons who own reportable sub-accounts.

Reporting requirements also arise from § 20.5(a), which requires all reporting entities to submit Form 102S for swap counterparty or customer consolidated accounts with reportable positions. In addition, § 20.5(b) requires every person subject to books or records under current § 20.6 to complete a 40S filing after a special call upon such person by the Commission.

In addition to the reporting requirements summarized above, § 18.05 imposes recordkeeping requirements upon: (1) Traders who own, hold, or control a reportable futures or options on futures position; (2) volume threshold account controllers; (3) persons who own volume threshold accounts; (4) reportable sub-account controllers; and (5) persons who own reportable subaccounts.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

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. On August 6, 2026, the Commission published in the **Federal Register** notice of the proposed revision of this information collection and provided 60 days for public comment on the proposed extension, 91 FR 50813 (“60-Day Notice”). The Commission received one comment from an anonymous commenter stating that the burden analysis in the 60-Day Notice “aggregates seven distinct reporting and recordkeeping instruments (§§ 17.01, 18.04, 18.05, 20.5) across 1,779 heterogeneous entities without itemizing form-specific burden.” The Commission, however, provides detailed burden estimates in its supporting statement. Moreover, the commenter did not otherwise comment on the Commission’s burden estimates or the utility of the information collected. Accordingly, the Commission is retaining its burden estimates.

Burden Statement: The Commission estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 1,779.

Estimated Average Burden Hours per Respondent: 102.

Estimated Total Annual Burden Hours: 188,980.

Frequency of Collection: On occasion.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 27, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026–22072 Filed 10–28–26; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the

Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice’s publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the website’s search function. Comments can be entered electronically by clicking on the “comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR—Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by any of the following methods:

- **Regulations.gov:** Go to <https://www.regulations.gov> and press the “Search” button, then proceed as follows:

1. Under Refine Documents Results—check the box to “Only show documents open for comment”;

2. Under Agency—select “See More” and check the box for “Commodity Futures Trading Commission,” then press the Apply button;

3. Identify this notice in the list of CFTC documents open for comment, press the “Comment” button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this notice on www.federalregister.gov, click the “Submit A Public Comment” button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- **Mail:** Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

(Nov. 18, 2013). Terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the final rules or in the Commission’s regulations.

• *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through *Regulations.gov* are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this notice, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act, the Paperwork Reduction Act, and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Michael Franklin, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5818; mfranklin@cftc.gov.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Derivatives Clearing Organizations, OMB Control No. 3038–0076. This is a request for an extension of a currently approved information collection.

Abstract: Commission Regulations 39.10, 39.11, 39.12, 39.13, 39.14, 39.15, 39.16, 39.17, 39.18, 39.19, 39.21, 39.24 and 39.27 establish reporting requirements for registered derivatives clearing organizations (DCOs). Regulation 39.3 requires any person seeking to register as a DCO to submit a completed Form DCO as provided in Appendix A to part 39, accompanied by all applicable exhibits. Subpart C of part 39 includes additional requirements for systemically important DCOs and DCOs that elect to be subject to subpart C. Subpart D of part 39 includes requirements for DCOs subject to alternative compliance. The rules establish reporting and recordkeeping requirements that implement Section 5b of the Commodity Exchange Act (CEA), and are necessary for the Commission to assess compliance of DCOs and DCO applicants with requirements prescribed in the CEA and Commission regulations.

On August 6, 2026, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension. 91 FR 50816 (60-Day Notice). The Commission received two relevant comments on the 60-Day Notice. The first comment stated that the 60-Day FRN's aggregate estimate of the average burden hours for all respondents to the collection obscures that applicants for DCO registration face a proportionally higher burden in preparing applications compared to registered entity's comparatively lower ongoing compliance burdens.¹ The Commission, however, provides granular burden estimates in the Supporting Statement submitted to the Office of Information and Regulatory Affairs, which includes estimates for applicants under Subpart A of Part 39, as well as Subparts B, C, and D, which apply to registered DCOs.

The second comment did not address the Commission's burden estimates, but recommended new substantive recordkeeping and risk-analysis requirements relating to tokenized collateral.² The commenter's recommendations were based primarily on CFTC Staff Letter No. 25–39, Tokenized Collateral Guidance (Dec. 8, 2025). That guidance, however, reflects only the views of the Commission staff

¹ Anonymous Comment at 1.

² Tokenization Systems Comment at 1.

divisions that issued the letter and does not create additional rights or requirements. Accordingly, the guidance does not provide a basis for modifying this information collection or adopting new forms to require additional recordkeeping, as recommended by the commenter.

Burden Statement: The Commission is revising its estimate of the burden for this existing collection of information. The Commission is increasing its estimate of the total number of registered DCOs from 13 to 24. Similarly, the Commission is increasing its estimate of the total number of applicants for full DCO registration from one to 10. The estimates are based on the number of DCOs registered with the Commission, as well as pending applications for full DCO registration as of July 2026.

The respondent burden for this collection is estimated to be as follows:

Estimated number of respondents:

109.

Estimated annual reports per respondent: 240.

Estimated total annual responses: 26,119.

Estimated average burden hours per respondent: 907.

Estimated total annual burden hours: 98,886.

Frequency of collection: Daily, monthly, quarterly, annually, and on occasion.

The capital and start-up or operations and maintenance costs associated with this collection are estimated at \$821,470.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 27, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026–22076 Filed 10–28–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2027–XXX–XXXX]

Request for Information

AGENCY: National Center for Education Statistics (NCES), Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Request for Information.

SUMMARY: NCES seeks comment on the strategic redesign of its portfolio of studies, including administrative data collections and sample surveys, both cross-sectional and longitudinal.

DATES: We must receive your comments by December 3, 2026.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). However, if you require accommodation or cannot otherwise submit your comments via [regulations.gov](https://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by email or by fax. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using [Regulations.gov](https://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the “FAQ” tab.

Privacy Note: The Department’s policy for comments received from members of the public is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. We encourage, but do not require, that each respondent includes their name, title, institution or affiliation, and the name, title, mailing and email addresses, and telephone number of a contact person for the institution or affiliation, if any. IES will not directly respond to comments.

This is a request for information only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, we are not seeking proposals for evaluation and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI will not be returned.

Accessible Format: By request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is

the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free on the site.

FOR FURTHER INFORMATION CONTACT: Matthew Soldner, Acting NCES Commissioner. You may email your questions to NCESCommissioner@ed.gov, but as described above, comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

The mission of the Institute of Education Sciences (IES) is to: “Provide national leadership in expanding fundamental knowledge and understanding of education from early childhood through postsecondary study, in order to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about, including the condition and progress of education in the United States, including early childhood education and special education; educational practices that support learning and improve academic achievement and access to educational opportunities for all students; and the effectiveness of Federal and other education programs.” (See: 20 U.S.C. § 9511).

IES carries out that mission through four centers, including the National Center for Education Statistics (NCES). NCES is specifically responsible for collecting and analyzing education-related statistical data. ESRA requires NCES to “collect, report, analyze, and disseminate statistical data related to education in the United States and in other nations, including—(1) collecting, acquiring, compiling (where appropriate, on a State-by-State basis), and disseminating full and complete statistics (disaggregated by the population characteristics described [below]) on the condition and progress of education, at the preschool, elementary, secondary, postsecondary, and adult levels in the United States . . .” (See: 20 U.S.C. 9543).

Like its fellow Centers, NCES is seeking to align its priorities more

closely with state and local education needs, accelerate the speed at which high-quality data and evidence are produced, and increase the use of those data and evidence by educators and policymakers so that student outcomes can be dramatically improved. This RFI seeks public comment on how it might do each.

The Challenge

The task of comprehensively describing the condition of education is daunting. The statutory remit that Congress has established for NCES, which spans multiple levels of education and topics in both the domestic and international context, is already an ambitious one. Further complicating its work is the breadth of stakeholders that NCES seeks to serve. The Center considers state and federal policymakers, students and families, educators, researchers, business leaders, and the media to be key constituents for its products—and is cognizant that each has its own information needs. As evidenced by the multiple observers who have commented as such, the need for NCES to prioritize what it collects, for whom, and for what purpose is a well-understood concern.

Perhaps less well understood is the role of time in NCES’s work. When time is considered as a factor in NCES work, it is most often operationalized as “the speed with which data are collected and released.” This is neither unsurprising nor wrong: the production of statistics in a timely manner is a core function of a statistical agency because the timeliness of data directly impacts its utility. But time and its passage is more than just a metric by which NCES’s operational efficiency can be judged (though it should be that, too).

As time passes, the conditions that surround education change—sometimes profoundly—and stakeholders’ information needs can change in turn. NCES has not, to date, adopted a process of strategic foresight designed to systematically envision potential futures and the information needs they demand. Over time, this has the potential to minimize the value of the data NCES produces because, due to changing conditions, data products may not be maximally responsive to the issue of the day. Honing this skill and leveraging its outcomes as NCES considers its portfolio of work is a critical element in any strategic redesign effort.

Purpose of This RFI

NCES seeks to develop a framework that can guide the strategic redevelopment of its portfolio of work. To do so, NCES is soliciting insights

from experts and innovators in state and local education policy and practice, federal statistics, data collection methods, and other interested stakeholders to address questions such as:

1. What data do states and districts, educators, and families currently most need to inform their efforts to improve outcomes for all learners?
2. How can we prepare data collections for future data needs reflecting the potential for changed educational conditions and challenges?
3. What data collection methods are best suited to meet current and evolving information needs?
4. How might data collection and dissemination be optimized for future Super Intelligence or SI (formerly referred to as Artificial Intelligence or AI) applications and uses?
5. What dissemination methods are best suited to meet the information needs of NCES's diverse audiences?
6. Which data collection and dissemination methods are most efficient, optimizing the value of the outputs generated by those activities and the resources needed to execute them?
7. What federal, state, local, and industry partnerships are needed to enable those methods and make the most of the data NCES collects?

Additional Areas of Interest

We also welcome comments on the two issues below.

1. NCES is particularly interested in minimizing burden on respondents, particularly in the context of declining survey response rates. However, NCES is committed to the utility of the data it provides to the public. How might NCES prioritize and streamline its data collections to balance respondent burden and benefit?
2. Historically, NCES has sought to maximize the potential value of its data by developing data assets and products for non-technical audiences. This has included extensive derivation of analytic variables drawing across multiple study data sources, imputation designed to maximize data's analytic utility, and the development of extensive user documentation. These activities necessarily compete with NCES's timeliness goals. How might NCES resolve this tension in a way consistent with its responsibilities as statistical agency serving the public?

Matthew Soldner,

Acting Commissioner, National Center for Education Statistics.

[FR Doc. 2026-22047 Filed 10-28-26; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

List of Borrowers Who Have Defaulted on Their Health Education Assistance Loans

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: Federal Student Aid (FSA), as required by the Public Health Service Act (the Act), is publishing this list of Health Education Assistance Loan (HEAL) borrowers who have defaulted on their loans as of August 17, 2026. This information is also made available for use by organizations authorized by the Act.

FOR FURTHER INFORMATION CONTACT:

For Defaulted HEAL Borrowers with Account-Related Questions: A borrower who is in default on a HEAL program loan and who has an account-related question should contact: Transworld Systems, Inc. (TSI), P.O. Box 15109, Wilmington, DE 19850; website: <https://payments.tsico.com>; or Telephone: 866-568-5978

For General HEAL Information: For general HEAL program questions, contact the HEAL program team: Email: HEAL@ed.gov or Telephone: 202-297-5938.

For Organizations Requesting HEAL Defaulted Borrower Information or Confirmation under Section 709(c)(2) of the Act: To request information related to a HEAL defaulted borrower or confirmation of the borrower's default status, contact the HEAL program team: Email: HEAL@ed.gov or Telephone: 202-297-5938.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: From fiscal year 1978 through fiscal year 1998, the HEAL program insured loans made by participating lenders to eligible graduate students in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, public health, pharmacy, and chiropractic, and programs in health administration and clinical psychology. Authorization for new HEAL program loans was discontinued on September 30, 1998.

Under division H, title V, section 525 of the Consolidated Appropriations Act, 2014 (42 U.S.C. 292 of Pub. L. 113-76), and title VII, part A, subpart I of the Public Health Service Act (42 U.S.C. Chapter 6A), the authority to administer the HEAL program, including servicing, collecting, and enforcing any loans made under the HEAL program that

remain outstanding, was transferred from the Secretary of Health and Human Services to the Secretary of Education effective July 1, 2014. Section 709(c)(1) of the Act (42 U.S.C. 292h(c)(1)) requires, and a routine use in a system of records notice published in the **Federal Register** on August 14, 2018 (83 FR 40264) permits, the publishing of the list of HEAL borrowers who have defaulted on their loans.

Information on the HEAL program is available on the Department of Education's FSA Partner Connect Knowledge Center website at: fsapartners.ed.gov/knowledge-center.

List of Defaulters

The following list provides the names and other information of borrowers who have defaulted on their HEAL program loans as of August 17, 2026. Specifically, the list includes the borrower's name, last known city and state of residence, discipline, and the total amount due on the HEAL debt. The Department publishes this information to correctly identify the person in default and to provide relevant information to the authorized recipients of this information, such as state licensing boards and hospitals.

In accordance with section 709(c)(2) of the Act (42 U.S.C. 292h(c)(2)), FSA will provide the information included in this **Federal Register** notice and updated information on the borrower's default status to relevant Federal agencies and to schools, school associations, professional and specialty associations, state licensing boards, hospitals with which listed borrowers may be associated, and other relevant organizations, upon written request to the email address listed under **FOR FURTHER INFORMATION CONTACT**. Any written request must be on the letterhead of the organization making the request.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF).

You may also access documents of the Department published in the **Federal Register** by using the article search

feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1071 *et seq.* and 1087a *et seq.*; and 42 U.S.C. 292h(c).

Wayne Sullivan,

Acting Principal Deputy Chief Operating Officer, Federal Student Aid.

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026

Last name	First name	MI	City	State	Discipline	Date	Due
Abe	Gregory	N	Tujunga	CA	PHA	25-Sep-93	\$79,990
Ackley	Brainard	L	Kitty Hawk	NC	CHM	18-Dec-91	1,071
Acosta-Delgado	Feliberto	D	Bronx	NY	DEN	22-Mar-97	102,287
Adeli	Mojgan	E	Los Angeles	CA	DEN	18-Apr-96	167,281
Adkins	Margo	M	Austin	TX	MED	21-May-92	1,165,719
Al-Amin	Ihsaan		Smyrna	GA	MED	25-Jul-92	116,617
Alana	Manuela	L	Pharr	TX	POD	10-May-03	248,700
Alden	Thomas	E	Cambridge	MA	CHM	11-Oct-97	150,218
Allen	Lawrence	P	Aguanga	CA	CHM	4-Sep-93	406,310
Alston	Linda	D	Philadelphia	PA	OST	10-Sep-02	206,150
Alter	Dale	N	Redding	CA	MED	25-Jan-97	480,617
Anaya	Enid	L	Ponce	PR	MED	8-Nov-08	30,087
Anderson	Angela	J	Torrance	CA	MED	17-Apr-87	213,473
Anderson-Kelly	Gwendolyn		Montgomery	AL	POD	22-Mar-91	313,781
Anyaji	George	I	San Diego	CA	MED	11-Feb-94	130,839
Armstrong	Daniel	J	San Francisco	CA	CHM	2-Nov-96	186,147
Arnesen	Douglas	W	Atascadero	CA	CHM	5-Jun-97	64,940
Azcueta	Justina	Q	San Jose	CA	DEN	12-Dec-09	184,253
Bacon	Pamela	M	Hollister	MO	DEN	11-Apr-92	279,770
Baez	Ana	V	Somerset	NJ	DEN	7-May-98	155,367
Bahadue	George	P	Matawan	NJ	OST	24-Jan-96	300,464
Bailey	David	W	Loma Lamba	CA	MED	21-Aug-13	54,110
Baird	Curtis	J	Mount Airy	MD	MED	7-Aug-97	114,466
Baker	Gale		Olympia Flds	IL	DEN	7-Mar-95	94,377
Baker	Walter	A	Mill Valley	CA	DEN	15-May-85	549,597
Ball Jr	Thomas		Detroit	MI	POD	1-Oct-85	111,888
Baranco	Patricia	E	Baton Rouge	LA	DEN	13-Apr-90	993,114
Baratta	George		Danville	CA	CHM	10-Jul-97	32,318
Barber	Mildred	L	Washington	DC	MED	4-May-87	152,251
Barnes	De Elward	F	Los Angeles	CA	CHM	1-May-97	62,880
Barney	Thomas	W	Sugar Grove	IL	CHM	18-Aug-05	55,380
Barquet	Jorge	J	Ocala	FL	DEN	26-Jul-11	314,953
Bayles	Jay	C	Westlake Village	CA	CHM	22-May-03	78,309
Beckford	Audrey	L	East Orange	NJ	OST	7-Jan-98	75,971
Bennett	Kathy		Caldwell	ID	CHM	4-Sep-09	77,609
Bentley Jr	James	W	Van Nuys	CA	DEN	27-Oct-01	26,771
Bergstrom	Eric	R	Anaheim Hills	CA	CHM	27-Apr-10	33,479
Bertsch	Dar	A	Santa Cruz	CA	CHM	28-Oct-98	42,168
Biosah-Coleman	Ada	N	Houston	TX	PUB	13-Mar-93	53,223
Bittenbender	Robert	G	Clarks Summit	PA	CHM	10-Sep-98	45,132
Bland Jr	Henry	N	Jacksonville	FL	DEN	21-Aug-97	261,050
Blase	Richard	M	Worcester	MA	DEN	10-Nov-84	566,020
Bolton	Paul	K	Kansas City	MO	CHM	9-Apr-98	145,256
Booher	Janette	L	South San Francisco	CA	CHM	9-Nov-96	68,187
Bowman	Jeffrey	S	Worthington	OH	CHM	5-Apr-88	26,809
Boyd	Brian	D	Bellingham	WA	CHM	10-Dec-11	4,478
Brandt	Susan	J	Winston Salem	NC	MED	20-Nov-01	98,998
Brantley	Carl	E	Houston	TX	DEN	10-Nov-87	46,594
Breazeale	Michael	E	Marietta	GA	CHM	27-Jun-87	356,362
Brodie	Douglas	K	San Antonio	TX	DEN	25-Dec-90	446,410
Brodsky	Barbara	L	San Francisco	CA	CHM	6-May-86	24,143
Bronk	Brian	R	Santa Monica	CA	CHM	20-Dec-86	78,315
Broussard	Charlotte	R	Carrollton	TX	CHM	5-Feb-98	19,463
Broussard	Linda	C	Los Angeles	CA	CHM	3-Aug-99	3,856
Brown	Darla	J	Highland	TX	CHM	4-Sep-93	580,327
Brown	Jeffrey	T	Gainesville	GA	CHM	12-Feb-99	34,882
Brown-Collins	Jannas	E	Columbia	SC	DEN	14-Nov-08	636,772
Bruyning	Edwin	F	Miami	FL	DEN	8-Apr-92	373,528
Buchta	Joseph	F	Bradenton	TX	DEN	23-Mar-04	36,437
Buchwald-Heilig	Bonnie	I	Tucson	AZ	CHM	27-Jul-93	33,642
Buford	John	I	Philadelphia	PA	OST	24-Jan-98	69,141
Bui	Khai	T	Springfield	MA	DEN	17-Jul-04	95,579
Bunce	Christine	T	Sonoma	CA	CPY	18-Jan-97	223,833
Caballero	Jorge	R	Los Angeles	CA	CHM	8-Feb-91	327,549

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Calix	Raul	O	Lennox	CA	CHM	23-Jun-01	11,891
Campanale	Paul	R	Jacksonville	FL	CHM	17-Aug-90	101,472
Canillas	Gregorio	L	Long Beach	CA	CPY	10-Apr-04	81,965
Caporaso	Nicholas	G	West Liberty	OH	CHM	25-Sep-93	24,490
Caputo	Francesco	J	Plainview	NY	CHM	25-Mar-05	288,312
Carlos	Lester	B	San Leandro	CA	CHM	13-Aug-02	71,752
Carney	Timothy	M	East Patchogue	NY	CHM	26-Jul-03	40,216
Carpenter	Richard	P	Saginaw	MI	CHM	9-Sep-87	34,906
Carthen	Michael		Brooklyn	NY	POD	28-Jan-95	440,905
Castaline	Perren	V	Canyon Country	CA	CHM	11-Dec-98	148,579
Castro	Henry	G	Corpus Christi	TX	CHM	14-Nov-98	66,070
Caulkins	Robert	M	Shrewsbury	MA	MED	11-Oct-95	525,716
Cha	Chris	S	Garden Grove	CA	DEN	16-May-96	373,328
Chen	Syng-Fu	F	Pls Vrds Pnsl	CA	MED	16-May-96	63,879
Choi	Seong	Y	Irvine	CA	DEN	6-Feb-96	190,275
Christiansen	John	C	Pleasant Grove	UT	CHM	16-May-07	84,771
Clark	Garth	A	Humble	TX	MED	25-Oct-97	192,096
Cleere	Carrol	E	Cedar Creek	TX	CHM	22-Nov-91	274,345
Cline	Sherri	L	Sylmar	CA	OST	9-Feb-90	4,400
Clouse	William	J	San Antonio	TX	POD	26-Apr-97	255,119
Coate	Linda		Reno	NV	CHM	29-Oct-93	225,414
Coleman Jr	Harold	J	Tacoma	WA	DEN	16-Jul-94	320,733
Collier	George	R	Ponderay	ID	DEN	13-Dec-90	318,638
Connaughton	Edward	M	Hermosa Beach	CA	CHM	3-Sep-10	39,288
Connor	Kenneth	J	Newport Beach	CA	CHM	6-Aug-97	91,840
Cook	Ian	K	Christiansted	VI	POD	20-May-98	221,744
Cook	Karen		Redwood City	CA	CHM	18-Sep-86	579,488
Cooke	Courtney	W	Van Nuys	CA	CHM	11-Dec-07	43,890
Coombs	Timothy	R	Anaheim	CA	CHM	8-Mar-97	136,595
Cooney	Carey	E	Eugene	OR	DEN	6-Nov-93	46,992
Coonts	Terry	A	Eldorado Springs	MO	CHM	10-Apr-97	15,337
Cooper	April	D	Hazel Crest	IL	MED	12-Dec-90	611,101
Cooper	Carol	A	Keizer	OR	CHM	16-Apr-98	216,425
Corcoran	Jamie	M	Bronx	NY	DEN	23-Jun-95	630,958
Cothran	Lonnie	A	Shady Point	OK	CHM	10-Sep-91	284,517
Cox	Michael	A	Oakland	CA	CHM	28-Sep-94	30,537
Coyle	Michele	M	Mission Viejo	CA	CPY	2-Sep-98	353,278
Cummins	David	F	West Roxbury	MA	DEN	15-Jul-87	192,134
Curtin	Michael	M	Vashon	WA	CHM	14-Jan-93	36,090
Cutts	David	P	Temecula	CA	DEN	29-May-87	195,990
Darrow	Victoria	L	Boca Raton	FL	CHM	17-Jul-90	129,977
Davalos	Steven	M	Carmel Valley	CA	CHM	8-Feb-97	53,864
Davidson	Blake	L	Richardson	TX	CHM	20-Oct-07	40,689
Davitiashvili	Nodari		Rego Park	NY	DEN	24-Sep-03	155,906
Dawe	Michael	E	Fort Worth	TX	OPT	6-Dec-11	19,045
De Jesus-Miranda	Luis	A	Fajardo	PR	OPT	5-Feb-00	102,882
Deleonardis	Michael	S	Houston	TX	MED	19-Mar-98	133,801
Demaria	Lynn	A	Albany	NY	MED	11-Dec-09	86,509
Dennis	Gwenda	B	Aliso Viejo	CA	MED	16-Aug-97	142,174
Derbonne	John	R	Lake Jackson	TX	CHM	14-May-05	36,745
Dewitt	Eldon	L	Neosho	MO	CHM	16-Mar-04	150,671
Dhaliwal	Emaline	K	Riverside	CA	CHM	3-Jun-94	9,485
Diesen	James	D	Orange Park	FL	CHM	10-Oct-91	488,247
Difiore Jr	William	E	Fountain Valley	CA	CHM	11-Apr-91	84,251
Dinh	Michael	K	Mcallen	TX	CHM	6-Oct-07	11,877
Ditroia	Frederick		Warrington	PA	DEN	11-Dec-92	78,217
Dominic	Anthony	J	Manasquan	NJ	MED	3-Jun-99	57,674
Dominicis	Beth	A	Lake Arrowhead	CA	CHM	6-Dec-97	26,131
Doom	Randolph	H	Murrells Inlet	SC	CHM	6-Apr-04	179,321
Dructor	James	D	Pittsburgh	PA	MED	26-Jun-97	79,092
Duarte	Leonardo		Jackson	NJ	CHM	7-Dec-00	47,368
Dungan	Kim	V	Fort Lauderdale	FL	CHM	19-Mar-87	163,517
Dupuis	Kenneth	J	Orono	ME	CHM	4-Jul-95	232,671
Durham	Ricky	L	Houston	TX	CHM	27-May-88	262,508
Dykeman	Peter	J	Hawthorne	CA	CHM	3-Aug-91	158,355
Elbayar	Nader	K	Port Washington	NY	POD	16-Aug-91	182,938
Elder	Terry	M	Glendale Heights	IL	CHM	9-Apr-98	255,129
Eli	Desiree	D	Soquel	CA	CHM	22-Jan-94	82,489
Ellis	Mark	S	Fullerton	CA	POD	6-Nov-97	163,587
Emerson	Edwin	A	Selden	NY	CHM	25-Sep-93	283,910
Engel	Rob	L	Garden Grove	CA	CHM	8-Nov-97	35,333
Ensminger	Aletha	M	Carmichael	CA	DEN	28-Sep-94	102,996

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Epstein	Judy	J	Carlsbad	CA	CPY	24-Jan-98	181,749
Eslao	Caesar	G	Carson	CA	DEN	14-Jan-93	167,531
Esmailbeigui	Babak		Pacific Palisades	CA	DEN	17-Sep-10	9,923
Etienne	Fernande		Brooklyn	NY	POD	15-Mar-97	209,145
Etumnu	Patrick	C	Houston	TX	CHM	7-Apr-99	34,604
Evans	William	L	Spring	TX	CHM	10-May-05	114,931
Falkinburg	Rory	D	Point Pleasant Boro	NJ	CHM	11-Feb-94	99,503
Fallman	James	M	Alhambra	CA	CHM	25-Dec-96	50,533
Falth-Vanvollenhoven	Annika	M	Pasadena	CA	MED	26-Oct-94	162,569
Fanizzi	Thomas		Brightwaters	NY	POD	8-Mar-91	563,034
Farris	Farral	W	Pagosa Springs	CO	CHM	11-Jan-97	81,205
Fayazfar	Mitra		Oak Park	CA	CHM	21-Apr-00	31,255
Feinman	Brian	M	Sunrise	FL	POD	16-Sep-00	1,002,931
Fenton	Mark	A	Van Nuys	CA	CHM	20-Dec-02	108,300
Fiore	James	P	Santa Ana	CA	CHM	24-Mar-99	74,690
Flunker	Edward	J	Houston	TX	CHM	14-Feb-01	14,011
Formaker	James	W	West Hollywood		DEN	4-Sep-93	122,872
Franco	Michael	G	Glendale	CA	MED	20-Sep-05	231,817
Francus	Irwin	N	East Northport	NY	CHM	26-Oct-94	587,641
Franks	Michael	A	Wharton	TX	CHM	14-Aug-04	30,370
Freeze	Kenneth	J	Amarillo	TX	CHM	4-May-96	158,123
Fridrick	Tim	P	Las Vegas	NV	CHM	11-Dec-91	63,423
Friedman	Marc	H	Huntington Beach	CA	POD	6-Apr-96	56,417
Fulton	William	C	Oakland	CA	CPY	8-Jun-99	88,661
Funcia	Ana	T	Miami	FL	DEN	7-Jan-98	228,810
Gaber	Alan	M	Levittown	PA	DEN	22-Jun-95	64,442
Galliher	Jack	T	Wimberley	TX	OPT	19-Sep-98	3,769
Gallucci	Don	A	Dedham	MA	DEN	16-Jan-85	175,553
Garner	Jeffrey	L	Cedar Rapids	IA	OPT	21-Mar-12	70,416
Gasso	Joaquin	A	Hollywood	FL	CHM	17-Sep-91	247,949
Gaydos	Richard	F	Highland	CA	CHM	26-Oct-96	59,110
Gdula	William	J	Brookline	MA	MED	2-Nov-04	22,572
Genna	Stephen	A	Bayville	NY	DEN	12-Sep-13	48,034
Ghalbi	Abdollnasser		Laguna Niguel	CA	CHM	12-Feb-98	41,459
Gifford	Craig	P	Keller	TX	DEN	5-Feb-94	124,260
Giventer	Alex		Los Angeles	CA	CHM	22-Aug-01	73,511
Gloshinski	Laura	E	Portland	PA	CHM	25-Jul-88	160,694
Gloskowski	Aaron		Phoenix	AZ	OST	23-Aug-11	12,047
Goins	Rondy	D	Detroit	MI	POD	8-Jan-03	353,506
Goldbeck	Donald	E	Woodland Hills	CA	CHM	4-Jul-95	116,099
Gomes	Steven	P	Santa Rosa	CA	CHM	4-May-96	59,416
Gomez	Meneleo	P	Glendale	CA	DEN	28-Oct-97	317,284
Gonzalez	Maria	E	East Rockaway	NY	DEN	10-Jul-97	81,463
Goodman	William	D	Thorp	WI	DEN	6-Nov-92	43,634
Goodwin	Randall	J	Satanta	KS	CHM	13-Feb-96	126,932
Gosa-Kersee	Angela	J	Allen	TX	DEN	6-Apr-96	433,811
Gottschling	Carl	F	Cleveland	OH	MED	28-Oct-99	173,021
Grant	Terry	E	Hempstead	NY	DEN	10-Jan-98	90,560
Gray	David	M	San Francisco	CA	POD	25-Apr-89	76,170
Greeno	Vincent	A	Bolton	MA	CHM	7-Apr-99	64,217
Greeson-Cargioli	Leisa	A	Noblesville	IN	CHM	25-Jun-91	43,672
Gregory	Thomas	M	Brentwood	NY	CHM	26-Nov-02	339,469
Gregory	Todd	A	Pismo Beach	CA	CHM	6-Jun-92	63,073
Grenier	Paul	S	Viroqua	WI	CHM	5-May-01	48,897
Grob-Mick	Renee	J	Dover	DE	MED	7-May-14	43,333
Grossman	Brian	W	Tulra	CA	CPY	16-Sep-08	93,244
Gulas	Carl	M	Los Gatos	CA	CHM	14-Sep-00	42,492
Guyer	Larry	G	Sebastopol	CA	CHM	12-May-98	45,472
Hahn	Peter	S	Hawthorne	CA	CHM	29-May-93	48,345
Haines	Steven	M	Jackson	NJ	CHM	11-Jan-97	58,800
Hall	Pamela	A	Miami Gardens	FL	CPY	10-Nov-89	228,041
Hamilton	Cynthia	R	Chino Hills	CA	MED	9-May-01	47,326
Hampton	Jubal		Long Beach	CA	POD	25-Dec-96	52,388
Hankins	Dean	G	Anaheim	CA	CHM	22-May-03	101,880
Hankins	Douglas	A	Anaheim	CA	CHM	9-Mar-13	72,778
Hansen	Kristen	T	Washington	UT	CHM	17-Aug-90	115,529
Harp	Richard	B	Hacienda Heights	CA	CHM	7-Mar-03	26,609
Harris	Conrad	W	Lanham	MD	DEN	12-Feb-93	157,030
Harris	Darryl	C	Atlanta	GA	MED	9-Jun-12	295,411
Harrison	Rodney	B	Claremont	CA	DEN	23-May-85	506,483
Hasley	Steven	J	Rock Island	IL	CHM	14-May-02	79,454
Hatfield	Brian	L	Brentwood	CA	CHM	30-Sep-93	72,507

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Hazelwood Iii	Harry	H	Daytona Beach	FL	PUB	4-Jun-88	328,515
Heckler	Rodney	R	Elgin	IL	CHM	22-Jun-96	28,651
Hennell-Larue	Renata	A	Mapleton	OR	CHM	5-Aug-95	49,294
Hernandez	Orestes	M	Los Angeles	CA	CHM	28-Mar-91	104,801
Herrera	Diego	F	Elmont	NY	DEN	5-Apr-97	409,878
Hibbert	Harold	H	Bronx	NY	MED	25-Apr-91	32,678
Ho	Wook		Los Angeles	CA	DEN	19-Oct-96	67,995
Hoang	Dat	T	Anaheim	CA	MED	21-Aug-01	71,719
Hoehn	James	D	Thousand Oaks	CA	DEN	27-Dec-90	91,701
Hoffman	Stuart		Venice	CA	CHM	12-Jul-89	26,502
Hollingsworth	Derek	J	Kalispell	MT	OST	22-Jun-11	65,836
Holt	Kenneth	G	Riverside	CA	CHM	27-Aug-91	98,009
Holzer	Richard	M	Glendale	AZ	CHM	21-Aug-88	184,157
Horsley	Ronald	G	Yulee	FL	CHM	20-May-88	101,649
Howell	Ralph	G	Medford	OR	CHM	19-Nov-85	293,407
Hungerford	Richard	D	Portola	CA	CHM	10-Dec-94	104,810
Hunt	Richard	D	Pasadena	CA	CHM	26-Oct-94	158,883
Hunter	Donald	E	Fairborn	OH	CHM	13-Jun-90	82,253
Hush	George	G	Afton	MI	CHM	28-May-88	116,593
Ichiuji	Arnold	T	Salinas	CA	DEN	19-Oct-96	120,582
Iliou	Claude	B	Punta Gorda	FL	MED	6-Apr-96	28,571
Ionova-Zalivchy	Irina	I	Brooklyn	NY	DEN	16-May-12	68,531
Iqal	Robert	S	Claremont	CA	PHA	13-Aug-94	13,451
Ito	Stephen	M	Navasota	TX	CHM	30-Jan-96	178,416
Jackson	Harold	O	Atlanta	GA	DEN	24-Apr-03	23,633
Jacob-France	Elizabeth		St Petersburg	FL	CHM	18-Dec-92	80,167
Jansson	Susanne	E	East Quogue	NY	GHA	23-Dec-87	147,588
Jeffcoat	Lori	M	Vallejo	CA	CHM	27-Oct-92	38,869
Jennifer	Jai		Oakland	CA	MED	17-Jun-05	65,322
Joergens Jr	Donald	W	Flemington	NJ	CHM	30-Sep-93	67,483
Johnson	Anthony		Detroit	MI	DEN	15-Aug-91	13,016
Johnson	Eric	D	Folsom	CA	CHM	23-Jun-93	449,591
Johnson	Gary	M	Burbank	CA	CHM	6-Apr-96	108,671
Johnson	John	B	Pasadena	TX	CHM	4-Aug-00	18,016
Johnson	Steven	R	Hillsboro	TN	CHM	8-Nov-86	190,839
Kahan	Robert	M	Mission Viejo	CA	CHM	20-Jun-86	94,546
Kantro	Scott	R	Pound Ridge	NY	POD	1-Jul-81	524,332
Katz	Steven	M	Sherman Oaks	CA	CHM	13-Jun-98	247,325
Kaufmann	Todd	S	San Rafael	CA	CHM	5-Apr-97	163,047
Kea	Rattana	D	Highland	CA	DEN	11-Dec-98	260,020
Keeler-Jones	Dawn	M	Port Saint Lucie	FL	CHM	2-Sep-98	131,845
Keenan	John	M	Watertown	NY	CHM	10-Jan-04	50,307
Kelly-Soluri	Laura		Farmingdale	NY	POD	14-Jun-91	306,192
Kempis	Richard	A	Santa Clara	CA	DEN	25-Dec-96	120,286
Khalsa	Gururakha	S	Springfield	VA	CHM	26-Mar-92	167,717
Khalsa	Har Hari	S	Beverly Hills	CA	CHM	7-Sep-01	71,121
Khan	Tariq	A	San Leandro	CA	DEN	6-Apr-04	66,355
Kim	Won Kak		Torrance	CA	CHM	19-Oct-96	106,055
King	James	H	Washington	DC	DEN	11-Nov-91	58,725
King	Susan	M	Apache Junction	AZ	CHM	16-Nov-96	183,635
Kirkpatrick	Ira	P	Hurst	TX	CHM	4-Jul-96	238,247
Klapper	Gerald	P	Hollywood	FL	POD	16-Jul-02	61,797
Klejnot	Timothy	A	Marietta	GA	CHM	23-Apr-91	251,841
Knight	Patricia	A	Bayport	NY	CPY	20-Mar-92	107,154
Ko	Joo	H	Marina	CA	CHM	23-Oct-02	21,281
Koukeh-Sackett	F	M	San Bernardino	CA	CHM	24-Dec-92	178,898
Kowalski	Brian	A	Irvine	CA	CHM	25-Oct-91	32,130
Kralj	Mladen	M	Chicago	IL	DEN	23-Mar-96	755,692
Krichevsky	Rita	A	Newtown	PA	MED	10-Jul-15	175,331
Krystosik	James	D	Streetsboro	OH	CHM	18-Jan-97	285,883
Kunen	Frederick	J	Miami	FL	MED	24-Jan-91	225,545
Kyprie	Warren		Boca Raton	FL	CPY	17-Feb-01	81,467
Lafleur	Allen	R	Hull	MA	CHM	1-Dec-85	525,098
Lamb	Robert	D	Portland	OR	CHM	12-Mar-94	228,202
Lampley	Joseph	C	Anson	TX	OST	9-May-13	167,642
Lancaster	Barry	D	Marietta	GA	CHM	24-Jun-92	145,992
Landou	Lissa	S	Belleville	NJ	CHM	17-Nov-94	202,628
Lane	Craig	R	Baltimore	MD	POD	10-Sep-97	367,671
Langham	Mary	L	Talkeetna	AK	OST	25-Sep-91	661,267
Lauffer	Mark	A	Ebensburg	PA	CHM	5-May-01	93,823
Lawton	Michael	D	Riverside	CA	MED	30-Dec-92	276,361
Lee	Steve	Y	Livingston	NJ	DEN	4-Jul-96	105,288

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Lent	Rosella	M	Nahant	MA	CHM	24-Feb-01	253,378
Leonor	Lillian		Riverside	CA	DEN	19-May-01	53,867
Lester	Robert	C	Waxahachie	TX	CHM	4-Oct-97	47,123
Leung	Leo	S	Yorktown Heights	NY	CHM	25-Sep-93	289,033
Levin	Nancy	E	Palm Beach Gardens	FL	CHM	20-May-93	307,609
Lewis	Richard	C	Colorado Springs	CO	CHM	2-Sep-98	9,212
Light	David		Winter Garden	FL	DEN	28-Apr-95	139,572
Lim	Jong	S	Elmhurst	NY	DEN	16-Sep-08	154,864
Lipschutz	Robert	B	Philadelphia	PA	POD	17-Jun-95	153,679
Little	Carlton	E	Niles	IL	MED	12-Jun-93	353,241
Littleton	Charles	R	Midwest City	OK	DEN	17-Nov-94	1,286
Lodwig	Michael	J	Castro Valley	CA	CHM	28-May-92	63,712
Lopez	Luis		Cathedral City	CA	CHM	10-Feb-88	253,092
Lottie	Mark	E	Covina	CA	CHM	18-Jan-97	129,322
Lucero	Lucky	E	San Bernardino	CA	DEN	4-Apr-96	77,899
Lunceford	Glenn	W	Norco	CA	CHM	30-Jan-92	69,298
Luta	Patricia	L	Santa Rosa	CA	CHM	8-Nov-97	114,193
Mack	Ollie	R	Sacramento	CA	MED	14-Sep-12	335,247
Maghloubi	Seyed	M	Los Angeles	CA	CHM	13-Jun-98	50,189
Major	David	C	Whittier	CA	CHM	17-Apr-09	11,005
Mannino	Guy	C	Fairbanks	AK	CHM	11-Jan-97	396,815
Mannino Seigel	Holly	L	Fontana	CA	CHM	18-Mar-93	58,793
Manriquez Jr	Antonio	M	Coachella	CA	CHM	26-Apr-03	91,717
Manvel	Barry	J	Napa	CA	CHM	16-May-96	44,393
Marcel	Perry	L	Grand Prairie	TX	DEN	12-May-98	191,960
Marcus	Alex		Orlando	FL	CHM	12-Mar-92	140,404
Marquez	Evelyn	W	Los Angeles	CA	CPY	31-Jan-91	152,370
Marts	Richard	A	Los Angeles		CHM	6-Mar-96	120,263
Mattson	James	A	Berkeley	CA	OST	5-Feb-00	197,839
Maxfield-Brown	Bobbi	L	Evansville	IN	CHM	18-Feb-94	903,878
Mazhar	Mark		Canoga Park	CA	CHM	11-Jan-97	133,756
Mcadams	Glen	R	Spring	TX	CHM	10-Sep-93	319,806
Mcalees	Raymond	M	North Palm Beach	FL	CHM	26-Jun-97	280,685
Mcatamney	John	P	Garden City	NY	CHM	11-Dec-07	24,018
Mccallum Iii	Ronald	D	Cloverdale	CA	CHM	4-Aug-98	26,637
Mcclore	Brian	C	Daytona Beach	FL	DEN	7-Dec-90	16,564
Mccombs	Martin		Long Beach	CA	CPY	16-Sep-97	327,726
Mconner	Sadie	B	Daytona Beach	FL	POD	12-May-92	61,434
Mcgee	Billie	J	Simi Valley	CA	CHM	12-Mar-86	155,601
Mcghee	Stephanie	Y	La Marque	TX	CHM	4-Apr-00	38,506
Mckay	Kevin	J	Dallas	TX	CHM	22-Mar-03	66,502
Mcmahan	Gregory	E	Fullerton	CA	DEN	15-Mar-97	34,174
Mcmorris	Bruce		Long Beach	CA	CHM	6-Dec-97	201,892
Mcroberts	Lynne	S	Canada	FC	CHM	20-Nov-93	125,309
Meade	Madeline	M	Cleveland	OH	DEN	25-Feb-94	88,134
Melendez	Angelina		Bronx	NY	POD	30-Sep-93	321,209
Melker	Neil	L	Princeton	NJ	DEN	13-Jul-96	249,660
Menezes	Michael	H	Tampa	FL	DEN	2-Sep-99	244,190
Mihalakis	Georgia		Bronx	NY	OST	11-Mar-88	573,859
Milanes-Scott	Barbara	J	Northridge	CA	MED	9-Aug-91	212,560
Milgram	Roman		Brooklyn	NY	DEN	8-Jul-11	44,886
Miller	Brad	T	Costa Mesa	CA	CHM	24-Sep-93	24,599
Miller	Bradley	G	Studio City	CA	MED	26-Sep-86	119,990
Miller	Gaylon	D	Bixby	OK	CHM	22-May-03	100,693
Millon	Jeffrey	M	Lithonia	GA	MED	23-Jan-93	221,023
Mills	Stephen	M	Powell	OH	CHM	4-May-96	6,560
Mitchell	Warren	A	Yucaipa	CA	DEN	7-Jan-98	528,303
Mizell	William	L	Los Lunas	NM	OST	14-May-97	327,418
Moarefi	Mahmdud	R	Encino	CA	CHM	19-Mar-98	76,971
Mohammadkhani	Alireza	D	Chatsworth	CA	CHM	21-Aug-97	55,620
Moler	Amy	M	Westerville	OH	MED	6-Dec-12	21,101
Morita	Phuong	T	Irvine	CA	CHM	6-Apr-96	132,943
Moroney	William	P	Nashville	TN	CHM	13-Nov-93	88,910
Morrone	Mark	J	Los Angeles	CA	DEN	22-Jun-96	223,879
Moulds Jr	Dan	R	Chattanooga	TN	DEN	8-Jan-92	222,312
Muecke	Lee	N	Houston	TX	MED	3-Aug-00	849
Muenker	Mark	E	Hillsboro	OR	CHM	16-Nov-96	324,671
Munoz	Luis	R	Chicago	IL	MED	28-May-94	680,030
Murphy	John	P	Black Earth	WI	CHM	10-Oct-97	38,110
Murphy	Marc	A	Rancho Santa Margar	CA	CHM	6-Jun-86	164,492
Murphy	Richard	N	North Bergen	NJ	CHM	22-Aug-91	1,787,322
Myers	Karen	A	Redondo Beach	CA	MED	13-Dec-88	278,038

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Nagel	Douglas		Herndon	VA	CHM	7-Feb-06	56,069
Nappi	Neil	A	West Palm Beach	FL	CHM	12-Mar-86	242,057
Navai	Mehdi	N	Rancho Palos Verdes	CA	CHM	28-Oct-91	467,341
New	Richard	A	Conway	SC	CHM	21-Nov-06	77,921
Newsome	Dorita		Livingston	NJ	DEN	26-Feb-86	80,349
Newsome	Raymond	E	Desoto	TX	CHM	6-Dec-97	269,536
Nguyen	Anh		Sacramento	CA	DEN	10-Sep-02	35,308
Nguyen	Charlene	D	La Habra	CA	CHM	10-Jul-10	33,798
Nguyen	Ho	H	Monterey Park	CA	CHM	10-Oct-91	163,521
Nguyen	Michael	M	Milpitas	CA	MED	6-Sep-03	44,366
Nguyen	Tuan	H	Fountain Valley	CA	OST	21-Apr-09	159,001
Nichols	Victoria	G	Encinitas	CA	CPY	25-May-04	12,748
Nieman	Edward		Riverside	CA	CHM	16-Nov-96	126,074
Nipper-Collins	Kristie	L	Lutz	FL	OST	17-May-03	36,173
Nkuku	Christopher	N	Berkeley	IL	MED	2-Sep-98	57,413
Nnokam	Kennedy	I	Corp Christi	TX	PUB	24-Jan-91	71,743
Nolasco	Elizabeth	R	Brooklyn	NY	MED	23-Mar-06	18,358
Ocon	Luis	E	Salinas	CA	CHM	25-Dec-96	12,247
Olajide	Gbolahan	A	Corona	CA	CHM	25-Mar-95	387,622
Olberg	Gregory	S	Hayward	CA	CHM	20-Apr-96	128,583
Owens	Gregory	A	Claremore	OK	CHM	25-Sep-93	50,839
Owens	James	R	Evans	GA	CHM	6-Mar-92	13,290
Pacheco	Carlos	A	Mcallen	TX	MED	10-Dec-94	34,484
Padilla-Torres	Carlos		Ponce	PR	OPT	18-Dec-92	22,429
Palmer	Becky	A	Fallbrook	CA	CHM	15-Dec-87	199,087
Palmer-Mitchell	Donna	C	Phoenix	AZ	POD	11-Oct-91	142,208
Pankey	John		Oakland	CA	CHM	16-Mar-91	153,913
Parkin	Dianne	E	Houston	TX	MED	24-Dec-93	22,746
Patterson Jr	Arthur	E	Holmdel	NJ	CHM	28-Jun-91	68,282
Paunovic	Susan	J	Hopewell Jct	NY	DEN	19-Mar-98	16,419
Payne	Patricia	D	Long Beach		OPT	6-May-04	135,469
Peerenboom-Grenier	Paula	J	Viroqua	WI	CHM	21-Apr-00	46,582
Pehush	Marie	L	Florida	NY	CHM	28-Sep-93	113,156
Pennington	Bradley	R	Denver	CO	CHM	9-Mar-12	38,436
Perkins	Daniel	R	Colorado Springs	CO	CHM	16-Feb-13	126,719
Perlmutter	Mark	A	Ann Arbor	MI	CHM	25-Dec-96	74,854
Perrault	Mark	D	Culver City	CA	MED	16-Apr-88	166,330
Perry	John	E	Houston	TX	MED	24-Jan-04	58,386
Petrosky	Michael	J	Mandeville	LA	CHM	23-Sep-94	340,707
Pham	Nghi	D	Fountain Valley	CA	CHM	26-Oct-94	134,907
Pham	Vinh	H	Fountain Valley	CA	DEN	6-Nov-97	272,419
Philipson	David		Huntington Beach	CA	CHM	8-Nov-97	70,738
Pierson	Steven	R	Minneapolis	MN	CHM	30-Dec-94	90,639
Pigott	Abu	G	Alameda	CA	CHM	22-Feb-97	75,161
Podry	Robert	J	Simi Valley	CA	CHM	23-Feb-91	151,833
Ponder Iii	Alvin	F	Brooklyn	NY	MED	18-Sep-89	248,952
Porter	Jacqueline	R	Washington	DC	POD	28-Sep-94	156,762
Potts	David	A	Pasadena	TX	CHM	14-Mar-96	26,118
Powell	Carlton	F	Elkins Park	PA	DEN	9-Jul-91	160,323
Pratt	Kerrie	G	Los Angeles	CA	CHM	23-Apr-02	56,422
Pritchard	Doyle	P	El Centro	CA	CHM	18-Sep-99	34,937
Prom	Van	S	Modesto	CA	CHM	28-Jul-92	86,013
Puryear	Cheryll	D	Richmond	TX	CHM	1-Aug-97	231,024
Pust	Keith	W	Hanford	CA	CPY	27-Aug-91	138,874
Radetic	Peter	M	Eagle	ID	CHM	18-Dec-92	110,050
Radtke	Joseph	D	Pueblo	CO	OST	25-Mar-04	88,844
Ramu	Nalaya		Beaumont	CA	DEN	15-Jan-99	104,423
Rappa	Richard	J	North Haven	CT	CHM	26-Apr-03	18,780
Rashti	Kouros		Encino	CA	DEN	19-Sep-98	332,436
Ratliff	Cynthia		Aptos	CA	CHM	25-May-88	329,709
Ravinski	Deborah	G	Plymouth	MA	CHM	23-Sep-97	6,877
Rayas-Felix	Magdalena		Los Angeles	CA	CHM	7-Dec-90	82,519
Reddick	David	J	Miami	FL	MED	19-Aug-92	170,805
Reese-Thurmond	Elaine	M	Chicago	IL	MED	27-Jun-86	190,702
Renz	Howard	W	Astoria	NY	CHM	15-Aug-84	112,308
Rey	Jorge	E	Chino	CA	CHM	4-May-96	32,576
Reyes	Danniell	J	Bethlehem	PA	CHM	15-Mar-02	150,037
Rhine	Cecil	T	Lawrenceville	GA	CHM	18-Apr-92	98,835
Ribera	Alfred	R	Miami	FL	CHM	4-May-96	241,420
Rice	William	M	Revere	MA	CHM	10-Oct-97	207,001
Richardson	Joseph	M	Fayetteville	NC	DEN	20-Oct-88	887,163
Richardson	Katherine	J	Oakland	CA	CPY	25-Sep-93	499,452

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Richichi	Mark	S	Center Moriches	NY	CHM	4-Sep-90	195,711
Richmond	Katherine	L	Cleveland	OH	OST	10-Sep-10	200,465
Ringstad	Celia	F	Cameron Park	CA	CHM	8-Feb-13	18,781
Ritto	Sharlene	M	Corona	CA	POD	15-Oct-92	294,090
Robinson	Glenn	R	Dallas	TX	CHM	30-Oct-91	141,298
Rogers	Thomas	C	Santa Ana	CA	CHM	4-May-96	251,211
Romero	Gloriana	M	Guaynabo	PR	MED	19-Dec-02	137,023
Rosenfeld	Jeffre	B	Los Angeles	CA	CHM	23-Oct-92	136,609
Roshy	Gary	L	Lake City	FL	CHM	4-Sep-93	556,383
Ross	Roger	A	Coraopolis	PA	CHM	19-Dec-87	1,736
Rostami	Helena		Calabasas	CA	CHM	15-Mar-02	31,632
Rothman	Laura	L	Arroyo Grande	CA	CHM	8-Nov-97	11,242
Rubinstein	David	M	Pompano Beach	FL	CHM	4-Aug-00	72,015
Russell	Robert	J	Hollywood	FL	CHM	17-Aug-90	10,791
Ryan	Kathleen		West Springfield	MA	POD	24-Mar-07	130,644
Saadia	David	M	Brooklyn	NY	DEN	20-Jul-11	8,999
Saadia	Sammy		Brooklyn	NY	DEN	13-May-04	193,478
Sainez	Juana	A	Maryland	NY	MED	7-Jan-09	86,704
Sainten	Adrienne	C	San Leandro	CA	CHM	23-Mar-04	19,746
Saldana-Quinonez	Salvador	S	La Puente	CA	CHM	18-Jul-01	42,646
Sambor	David	H	Lockport	NY	DEN	27-Aug-97	7,150
Santa Cruz	Matthew	E	Tampa	FL	CHM	30-Apr-87	48,834
Sargent	John	F	Minneapolis	MN	CHM	17-Jul-90	261,447
Sastre	Armando	A	Cortez	CO	DEN	17-Jul-02	109,219
Saunders	Ronald	W	San Antonio	TX	CHM	9-Apr-94	36,329
Savage	Robert	L	Harrisburg	PA	DEN	11-Jul-08	148,492
Schalk	Ronald	R	Corpus Christi	TX	CHM	18-Jan-86	61,313
Schiff	Barbara	S	Woodland Hills	CA	CHM	5-Feb-98	149,939
Schroder	Anthony	M	Middletown	NY	DEN	29-Jan-86	98,993
Schulten	Eric	A	Sarasota	FL	MED	12-Feb-98	242,949
Schwartz	Eric	G	Atlantic Beach	NY	DEN	7-Aug-93	257,782
Scruggs	Virginia	M	Seneca	SC	OST	25-May-07	67,353
Sek	Amaramony	B	Houston	TX	CHM	6-Jul-07	23,996
Selko	Robert	L	Morro Bay	CA	CHM	5-Apr-97	175,080
Sellitto	Rocco	V	Brooklyn	NY	POD	15-Jul-98	286,623
Senatore	Salvatore		Kenilworth	NJ	CHM	12-Nov-92	162,704
Serratos	Ernesto		Crestline	CA	CHM	24-Jan-92	146,096
Shahrestani	Shahriar		Anaheim	CA	CHM	14-Jun-97	64,778
Shanefelter Iii	Charles	D	Richardson	TX	CHM	4-Sep-93	42,960
Shapiro	Michael	S	Newhall	CA	CHM	24-Sep-93	144,347
Shapley	Kevin	N	Concord	CA	CHM	29-May-97	49,578
Shear	David	S	Staten Island	NY	CHM	9-Jul-94	246,823
Sheehan	Alex	J	West Palm Beach	FL	CHM	9-Apr-98	41,219
Shin	Hui-Yong		Los Angeles	CA	DEN	12-Jun-93	100,844
Shoeleh	Hossien	M	Irvine	CA	DEN	22-Aug-90	281,774
Simon	Greg	L	Murrieta	CA	CHM	22-Dec-88	267,105
Simpson	Ashley	L	Allston	MA	MED	28-Aug-93	412,070
Slusher-Maroudas	Patricia	L	Gilroy	CA	CHM	15-May-03	12,113
Smith	George		Philadelphia	PA	MED	19-Dec-87	687,838
Smith	Jessica		Downey	CA	CHM	26-Mar-88	171,388
Smith	Lee	A	Sterling	VA	CHM	8-Feb-13	64,541
Smith	Michael	D	Bethel Park	PA	DEN	22-Nov-97	477,583
Smith	Michael	P	Encinitas	CA	MED	18-Jun-10	81,785
Smith	Rusty	A	Santa Barbara	CA	CHM	3-Feb-90	10,610
Smith	Stacey	D	Malibu	CA	CHM	26-Jan-99	186,740
Smukler	Evie	L	Los Angeles	CA	CPY	13-Mar-93	46,223
Snively	Danny	H	San Juan Capistrano	CA	CHM	12-Nov-92	365,188
Sokol	Louis	J	Stuart	FL	CHM	13-Dec-97	60,757
Sparks	Stacey	L	Houston	TX	CHM	2-Sep-98	88,510
Spears	Timothy	P	Arlington	TX	CHM	16-Feb-12	45,333
Spicer	Mary	C	Essex Junction	VT	CHM	21-Aug-13	18,484
Staley	Judith	M	Annapolis	MD	CPY	12-Apr-01	132,828
Stalker	James	W	Castro Valley	CA	CHM	5-Feb-93	16,632
Stanbridge	Gary	R	Whittier	CA	CHM	13-Aug-99	45,275
Steiner	Jean Marie		Sunnyvale	CA	CHM	18-May-96	25,345
Steinfeld	Audrey	G	Tarzana	CA	CHM	16-Nov-96	301,436
Stephens	Charles	N	Milledgeville	GA	CHM	21-May-92	63,640
Stevenson	Teresa	M	Los Angeles	CA	CPY	28-Sep-94	167,963
Stoltz	William	D	Grants Pass	OR	CHM	18-Jun-92	393,404
Stone	Steven	D	San Leandro	CA	CHM	15-May-93	70,751
Street	James	F	Gainesville	GA	POD	6-Feb-93	84,948
Strus	Deborah	A	San Antonio	TX	MED	7-May-99	140,704

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Sturgeon	David	E	Malibu	CA	DEN	8-Jan-99	227,537
Sullivan	John	K	Eugene	OR	DEN	15-May-87	61,408
Sullivan	John	M	Corpus Christi	TX	CHM	9-Feb-11	147,353
Sullivan	Joseph	C	Los Angeles	CA	CHM	11-Dec-92	132,638
Taylor	Scott	M	Thousand Oaks	CA	DEN	9-Jan-10	179,634
Tchakalian	Leon	J	Van Nuys	CA	CHM	3-Nov-99	21,048
Teague	Jenette		Los Angeles	CA	DEN	15-Dec-99	159,758
Tennant	Michael	D	Wheat Ridge	CO	CHM	15-Sep-92	104,347
Thomas	Gordon	A	Atlanta	GA	CHM	19-Jun-88	239,008
Thomas	Randy	L	Fairbanks	AK	DEN	21-Jan-95	253,960
Thomas Sr	Robert	B	Stone Mountain	GA	DEN	15-Mar-85	518,312
Thompson	Emma	R	West Indies	FC	MED	15-Aug-93	105,199
Tierney	Richard	W	Atlanta	GA	POD	8-Nov-97	473,423
Tomlin-Knight	Teresa	L	Manahawkin	NJ	POD	1-Feb-97	91,370
Toporovsky	Nathan	A	White Plains	NY	DEN	25-Jun-92	24,911
Tran	Huong	N	Carpinteria	CA	CHM	14-Jun-97	71,426
Tran	Ngoc	H	Simi Valley	CA	CHM	11-Jan-97	113,519
Tran	Thuan	K	Henderson	NV	DEN	12-May-07	106,138
Trumbo	Traig	T	Pacific Palisades	CA	CHM	9-May-95	110,643
Tschabrun	Kevin	L	Holdrege	NE	DEN	17-Apr-96	136,205
Tumas	Mary	D	Brielle	NJ	CHM	25-Feb-92	91,171
Urquhart	Charles	N	Reading	PA	DEN	28-Feb-91	72,521
Ussery	Marvin		Hawthorne	CA	DEN	16-Nov-96	65,035
Vacula	Nicole	A	Tonawanda	NY	CPY	26-Jul-11	58,765
Vafaee	Mohammadali		Santa Monica	CA	CHM	23-May-03	25,302
Vaishvila	Gail	A	Pahrump	NV	CHM	14-Sep-95	252,835
Valicenti	Patrick	J	Wallkill	NY	DEN	12-Oct-01	93,714
Vanrensselaer	Jeffrey	A	Lake Forest	CA	CHM	30-Jan-96	104,788
Vardanian	Michael	A	Fullerton	CA	CHM	4-May-91	126,973
Vega	Javier	J	Rancho Cucamonga	CA	CHM	18-Feb-88	59,422
Vessels	Steven	L	Oak Hills	CA	CHM	4-Sep-93	233,491
Vessey	Ned		Pasadena	CA	CHM	16-Nov-96	73,755
Villaverde	John	J	Vestavia	AL	MED	16-Apr-85	91,026
Villegas	Isreal		Goddard	KS	CHM	21-May-02	54,408
Villeta	Javier	G	Kissimmee	FL	MED	1-Nov-87	399,424
Viloria-Else	Jenifer	A	North Hollywood	CA	CHM	6-Aug-86	196,728
Voboril Jr	William	R	Carlisle	IA	POD	13-Jul-96	15,802
Wade	Michael	J	La Quinta	CA	OST	24-Jun-98	325,083
Wahdan	Buthayna	W	Jordan	FC	DEN	16-Nov-96	187,546
Wainwright	Mark		Oakland	CA	DEN	13-Nov-93	33,449
Walcher	Kevin	R	Booker	TX	CHM	17-Apr-96	111,954
Walker	Joel	W	Annapolis	MD	MED	22-Aug-01	58,683
Wall	Michael	J	Sandy	UT	MED	5-Feb-99	150,271
Wallace	Owen		Treasure Island	FL	CHM	4-May-91	60,841
Walsh	Richard	J	Ventura	CA	CHM	24-Sep-93	44,684
Walton	Teri	R	Pasadena	CA	CPY	14-Feb-96	191,113
Warner	Arthur		San Ramon	CA	DEN	11-Oct-90	146,244
Warner	Rick	A	Aurora	CO	CHM	13-Oct-84	111,070
Washington	Arthur	C	Houston	TX	MED	10-Feb-04	25,140
Washington	George	L	Tupelo	MS	DEN	5-Feb-99	644,968
Washington-Houzell	Patricia	L	Lakewood	CA	POD	19-Mar-98	604,502
Weil	Mitchell	A	San Clemente	CA	MED	1-Aug-91	75,903
Weisheit-Dasylda	Lyn	D	Marietta	GA	CHM	30-Sep-92	50,170
Welch	Ronald	B	Sandpoint	ID	CHM	27-May-95	111,145
Westing	Denise	D	Alameda	CA	CHM	17-Apr-93	130,792
Whedbee	Joseph	I	Redlands	CA	DEN	5-Feb-00	143,556
Whigham	Gwendolyn	E	Houston	TX	CHM	8-Mar-91	75,290
Whipkey	Douglas	G	Jensen Beach	FL	CHM	27-Aug-91	154,251
Whitaker	Aaron	T	Washington	DC	DEN	15-Jul-87	241,553
Whittlesey	James	B	Novato	CA	CHM	25-Jul-92	56,918
Williams	Brett	S	Los Angeles	CA	MED	1-Feb-97	210,329
Williams	David	L	Pasadena	CA	POD	18-Jan-86	104,909
Williams	Duane	A	Oceano	CA	CHM	21-Aug-88	138,908
Williams	Johnnie		Hayward	CA	MED	17-Feb-88	549,787
Williams	Pamela	A	Corona	NY	PUB	4-Dec-84	49,149
Williams	Simeon	J	Washington	DC	MED	17-Feb-96	120,037
Winston	Gregg	O	Pompano Beach	FL	CHM	16-Nov-96	230,332
Wong	Matt	S	Mountain View	CA	CHM	26-Mar-05	49,247
Wong	Wan Sing	V	Union City Way	CA	POD	19-Jun-99	217,352
Wright-Benford	Sheila	A	Southfield	MI	POD	26-Oct-02	65,107
Yeates	Terrance	C	Brooklyn	NY	DEN	6-Mar-88	260,998
Yniguez	Alma	B	Newark	CA	CHM	1-Feb-88	239,561

HEALTH EDUCATION ASSISTANCE LOAN DEFAULTERS AS OF AUGUST 2026—Continued

Last name	First name	MI	City	State	Discipline	Date	Due
Yoste	Joseph		Brownsville	TX	DEN	17-Apr-93 ...	114,807
Yurick	Richard		Bay St Louis	MS	CHM	10-Dec-94 ...	51,090
Yurkovich	Mark	R	Bentleyville	PA	CPY	13-Mar-93 ...	59,507
Zaun	Timothy	M	Lakewood	OH	DEN	22-Jun-90 ...	226,304
Zeitsoff-Mahar	Deborah	L	Laguna Beach	CA	CHM	29-May-86 ..	162,782
Zucker	Ronald	G	Long Beach	NY	CHM	14-Dec-90 ...	271,077

[FR Doc. 2026-22040 Filed 10-28-26; 8:45 am]

BILLING CODE 4000-01-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 Numbers: RP27-56-000.
Applicants: PPG Shawville Pipeline, LLC.

Description: 4(d) Rate Filing: Normal filing Oct 2026 to be effective 9/25/2026.

Filed Date: 10/22/26.

Accession Number: 20261022-5154.

Comment Date: 5 p.m. ET 11/3/26.

Docket Numbers: RP27-57-000.

Applicants: Sabine Pipe Line LLC.

Description: 4(d) Rate Filing: Operational Flow Order Tariff Revisions to be effective 11/23/2026.

Filed Date: 10/22/26.

Accession Number: 20261022-5179.

Comment Date: 5 p.m. ET 11/3/26.

Docket Numbers: RP27-58-000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: 4(d) Rate Filing: Negotiated Rate Agreements—Various Shippers November 2026 to be effective 11/1/2026.

Filed Date: 10/23/26.

Accession Number: 20261023-5029.

Comment Date: 5 p.m. ET 11/4/26.

Docket Numbers: RP27-59-000.

Applicants: Southeast Supply Header, LLC.

Description: 4(d) Rate Filing: NegRate—FPL to TC Energy 940075 to be effective 11/1/2026.

Filed Date: 10/23/26.

Accession Number: 20261023-5039.

Comment Date: 5 p.m. ET 11/4/26.

Docket Numbers: RP27-60-000.

Applicants: Gulf Run Transmission, LLC.

Description: 4(d) Rate Filing: Amendment No. 3—NRA with Golden Pass to be effective 11/1/2026.

Filed Date: 10/23/26.

Accession Number: 20261023-5040.

Comment Date: 5 p.m. ET 11/4/26.

Docket Numbers: RP27-61-000.

Applicants: Carlsbad Gateway, LLC.

Description: 4(d) Rate Filing: Carlsbad Gateway Annual Fuel Use and Lost Gas Adjustment Filing to be effective 11/1/2026.

Filed Date: 10/23/26.

Accession Number: 20261023-5060.

Comment Date: 5 p.m. ET 11/4/26.

Docket Numbers: RP27-62-000.

Applicants: Arlington Storage Company, LLC.

Description: Compliance filing: Disposition of Retained Quantities Filing to be effective N/A.

Filed Date: 10/23/26.

Accession Number: 20261023-5091.

Comment Date: 5 p.m. ET 11/4/26.

Docket Numbers: RP27-63-000.

Applicants: Spire MoGas Pipeline LLC.

Description: 4(d) Rate Filing: Spire MoGas Pipeline Negotiated Rate Tariff Filing to be effective 11/1/2026.

Filed Date: 10/26/26.

Accession Number: 20261026-5045.

Comment Date: 5 p.m. ET 11/9/26.

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: PR26-78-001.

Applicants: Delta North Louisiana Gas Company, LLC.

Description: Amendment Filing: Delta North Amended SOC Filing to be effective 8/3/2026.

Filed Date: 10/22/26.

Accession Number: 20261022-5153.

Comment Date: 5 p.m. ET 11/12/26.

Protest Date: 5 p.m. ET 12/21/26.

Docket Numbers: RP26-1152-001.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing:

NAESB 4.0 Revisions—Amendment to be effective 1/1/2027.

Filed Date: 10/23/26.

Accession Number: 20261023-5178.

Comment Date: 5 p.m. ET 11/4/26.

Docket Numbers: RP26-1328-001.

Applicants: Leaf River Energy Center LLC.

Description: Compliance filing: LREC LLC Supplemental Filing in Compliance with Order No. 587-AB (Type 580) to be effective N/A.

Filed Date: 10/26/26.

Accession Number: 20261026-5049.

Comment Date: 5 p.m. ET 11/9/26.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern Time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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: October 26, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-22088 Filed 10-28-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG27–19–000.
Applicants: Springwater Solar, LLC.
Description: Springwater Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/22/26.
Accession Number: 20261022–5197.
Comment Date: 5 p.m. ET 11/12/26.
Docket Numbers: EG27–24–000.
Applicants: Great Plains Solar, LLC.
Description: Great Plains Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/23/26.
Accession Number: 20261023–5116.
Comment Date: 5 p.m. ET 11/13/26.
Docket Numbers: EG27–25–000.
Applicants: Switchgrass Plains Solar, LLC.
Description: Switchgrass Plains Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/23/26.
Accession Number: 20261023–5118.
Comment Date: 5 p.m. ET 11/13/26.
 Take notice that the Commission received the following Electric Rate filings:
Docket Numbers: ER10–1915–015; ER10–1963–015; ER20–2060–006.
Applicants: MPH Rockaway Peak, LLC, Jamaica Bay Peaking Facility, LLC, Bayswater Peaking Facility, LLC.
Description: Notice of Non-Material Change in Status of Bayswater Peaking Facility, LLC, et al.
Filed Date: 10/22/26.
Accession Number: 20261022–5215.
Comment Date: 5 p.m. ET 11/12/26.
Docket Numbers: ER13–738–016; ER11–3097–020; ER10–1186–019; ER12–421–010; ER11–2731–010; ER23–1279–005; ER10–3169–018.
Applicants: Michigan Power Limited Partnership, DTE Energy Services, Inc., Heritage Stoney Corners Wind Farm I, LLC, Heritage Garden Wind Farm I, LLC, DTE Energy Supply, LLC, DTE Energy Trading, Inc., DTE Electric Company.
Description: Notice of Non-Material Change in Status of DTE Electric Company, et al.
Filed Date: 10/22/26.
Accession Number: 20261022–5219.
Comment Date: 5 p.m. ET 11/12/26.
Docket Numbers: ER13–2199–002; ER10–2938–002; ER10–2269–003; ER10–2937–002; ER10–2948–002.
Applicants: AG-Energy, L.P., AER NY-Gen, LLC, Carthage Energy, LLC, Alliance Energy Marketing, LLC, Allegany Generating Station LLC.
Description: Notice of Change in Status of Allegany Generating Station LLC, et al.
Filed Date: 10/21/26.

Accession Number: 20261021–5219.
Comment Date: 5 p.m. ET 11/12/26.
Docket Numbers: ER14–1154–003; ER18–2399–005; ER19–1194–004; ER24–1448–001; ER10–2765–003; ER25–3327–002; ER18–920–014; ER17–436–013; ER10–2676–009.
Applicants: Milford Power Limited Partnership, Marcus Hook Energy, L.P., Marco DM Holdings, L.L.C., JERA Americas Energy Services LLC, Dighton Power, LLC, Stonepeak Kestrel Energy Marketing LLC, Canal 3 Generating LLC, Canal Generating LLC, Verso Bucksport Power LLC.
Description: Triennial Market Power Analysis for Northeast Region of Bucksport Generation LLC, et al.
Filed Date: 10/21/26.
Accession Number: 20261021–5225.
Comment Date: 5 p.m. ET 12/21/26.
Docket Numbers: ER18–1183–016; ER18–1184–016.
Applicants: Delta Solar Power II, LLC, Delta Solar Power I, LLC.
Description: Notice of Change in Status of Delta Solar Power I, LLC, et al.
Filed Date: 10/23/26.
Accession Number: 20261023–5217.
Comment Date: 5 p.m. ET 11/13/26.
Docket Numbers: ER26–3294–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Reponse to Oct 1, 2026 Deficiency Notice in ER26–3294 to be effective 7/1/2026.
Filed Date: 10/23/26.
Accession Number: 20261023–5184.
Comment Date: 5 p.m. ET 11/13/26.
Docket Numbers: ER26–3375–001.
Applicants: Glover Creek Solar, LLC.
Description: Tariff Amendment: Response to Information Request to be effective 8/1/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5052.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER26–3376–001.
Applicants: PGR 2022 Lessee 9, LLC.
Description: Tariff Amendment: Response to Information Request to be effective 8/1/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5054.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–263–000.
Applicants: RE Scarlet LLC.
Description: 205(d) Rate Filing: Amendment to LGIA Co-Tenancy Agreement and Request for Waivers to be effective 10/24/2026.
Filed Date: 10/23/26.
Accession Number: 20261023–5190.
Comment Date: 5 p.m. ET 11/13/26.
Docket Numbers: ER27–264–000.
Applicants: Kifer Energy Storage LLC.

Description: Initial Rate Filing: Petition for Order Accepting MBR Tariff and Request for Expedited Action to be effective 10/27/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5035.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–265–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6680; AD2–071 to be effective 12/26/2026.
Filed Date: 10/26/26.
Accession Number: EN20261026–5063.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–266–000.
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: Second Amended EPCA Alle-Catt II Wind Project SA2794 to be effective 10/13/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5067.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–267–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Heart Pine Solar LGIA Filing to be effective 10/14/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5104.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–268–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Sweet Magnolia Solar & Storage LGIA Filing to be effective 10/14/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5106.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–269–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Amendment to ISA, SA No. 7087; Queue No. AF1–062 to be effective 12/26/2026.
Filed Date: 10/26/26.
Accession Number: 20261026–5114.
Comment Date: 5 p.m. ET 11/16/26.
Docket Numbers: ER27–270–000.

Applicants: Louisville Gas and Electric Company.

Description: Tariff Amendment: Louisville Gas and Electric Company submits tariff filing per 35.15: Notice of Cancellation of Amended and Restated Transmission Coordination Agrmt. to be effective 12/31/9998.

Filed Date: 10/26/26.

Accession Number: 20261026–5117.

Comment Date: 5 p.m. ET 11/16/26.

Docket Numbers: ER27–271–000.

Applicants: Louisville Gas and Electric Company.

Description: Tariff Amendment: Notice of Cancellation of Amended and Restated Power Supply System Agreement to be effective 12/31/9998.

Filed Date: 10/26/26.

Accession Number: 20261026–5122.

Comment Date: 5 p.m. ET 11/16/26.

Docket Numbers: ER27–272–000.

Applicants: Kentucky Utilities Company.

Description: Tariff Amendment: Notice of Cancellation of Kentucky Utilities Transmission eTariff Database to be effective 12/31/9998.

Filed Date: 10/26/26.

Accession Number: 20261026–5125.

Comment Date: 5 p.m. ET 11/16/26.

Docket Numbers: ER27–273–000.

Applicants: Public Service Company of New Mexico.

Description: 205(d) Rate Filing: PNM Concurrence Filing with APS RS 329 to be effective 11/4/2026.

Filed Date: 10/26/26.

Accession Number: 20261026–5133.

Comment Date: 5 p.m. ET 11/16/26.

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: October 26, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–22087 Filed 10–28–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0721; FRL–13684–01–OFA]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Chemical Data Reporting Under the Toxic Substances Control Act (TSCA) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Chemical Data Reporting Under the Toxic Substances Control Act (EPA ICR Number 1884.17, OMB Control Number 2070–0162) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2026. Public comments were previously requested via the **Federal Register** on February 24, 2026 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before November 30, 2026.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2013–0721 to EPA online using www.regulations.gov (our preferred method), by email to docket.epa.gov or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Submit written comments and recommendations to OMB for the proposed information

collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Marissa Lewis, Office of Mission Critical Operations, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1562; email address: Lewis.Marisa@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through October 31, 2026. 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.

Public comments were previously requested via the **Federal Register** on February 24, 2026 during a 60-day comment period (91 FR 8872). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: This information collection request (ICR) addresses the paperwork requirements contained in the current Chemical Data Reporting (CDR) rule (40 CFR part 711) under the Toxic Substances Control Act (TSCA). Under TSCA section 8(a) (15 U.S.C. 2607), the Environmental Protection Agency (EPA) is authorized to collect certain information on chemical substances manufactured (including imported) or processed in the United States. The CDR was formerly known as the Inventory Update Rule (IUR).

The CDR collection provides chemical manufacture, processing, and use information that helps EPA identify chemicals to which the public may be exposed as consumers or as workers in commercial and industrial settings. The data also helps EPA assess routes of potential exposure to those chemicals. The CDR data collection is on a four-year reporting cycle and contains detailed manufacturing, processing, and use information drawn from the principal reporting year; as well as basic information on production volume, by

year, for the three years prior to the principal reporting year. The next CDR collection will occur in 2028; there are no changes to the reporting requirements.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Form Number: 9600–010.

Respondents/affected entities: Entities potentially affected by this ICR include companies manufacturing (including importing) certain chemical substances listed on the TSCA Inventory and regulated under TSCA section 8(a) CDR regulation. North American Industrial Classification System (NAICS) codes are identified in question 12 of the ICR.

Respondent's obligation to respond: Mandatory. 15 U.S.C. 2607; 40 CFR part 711.

Estimated number of respondents: 5,238 (total).

Frequency of response: Once every four years.

Total estimated burden: 891,053 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$92,127,597 (per year), which includes \$0 annualized capital or operation & maintenance costs.

Changes in the estimates: This ICR includes an increase of 161,568 hours in the total estimated burden compared with that currently approved by OMB. The increase reflects the use of 2020 CDR data (rather than 2016 CDR used for the previous ICR update) for estimating the reporting universe. Although in 2020 fewer sites reported to CDR than in 2016 (*i.e.*, fewer Form Us submitted), on average the sites reported a greater number of chemicals. In 2020 CDR, there were 5,238 sites reporting on 8.3 chemicals per report as opposed to 5,460 sites and 7.38 chemicals per report in 2016 CDR. This change resulted in a substantial increase in the number of chemical reports submitted. In addition, fewer chemical reports were for partially exempted chemicals (see 40 CFR 711.6 for a list of chemicals that are partially exempted from reporting under CDR). In 2016 CDR, approximately 21% of reports were partial reports, whereas in 2020 CDR the share of partial reports was about 7%. The average burden for each chemical report is higher because a greater percentage of the chemical

reports are full reports. This change is an adjustment.

Courtney Kerwin,

Deputy Director, Data and Enterprise Programs Division.

[FR Doc. 2026–22057 Filed 10–28–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–13643–01–OLEM]

Fiftieth Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (“Docket”) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. This document identifies the Federal facilities not previously listed on the Docket and identifies Federal facilities reported to EPA since the last update on April 23, 2026. In addition to the list of additions to the Docket, this document includes a section with revisions of the previous Docket list and a section of Federal facilities that are to be deleted from the Docket. Thus, the revisions in this update include one addition, one deletion, and eighteen corrections to the Docket since the previous update.

DATES: This list is current as of September 30, 2026.

FOR FURTHER INFORMATION CONTACT:

Electronic versions of the Docket and more information on its implementation can be obtained at <https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket> by clicking on the link for Cleanups at Federal Facilities or by contacting Jonathan Tso; email address: tso.jonathan@epa.gov, Federal Agency Hazardous Waste Compliance Docket Coordinator, Office of Superfund and Emergency Management. Additional information on the Docket and an electronic version of the complete list of Docket sites can be obtained at: <https://www.epa.gov/fedfac/federal-agency-hazardous-waste-compliance-docket-1>.

SUPPLEMENTARY INFORMATION:

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- 1.0 Introduction
- 2.0 Regional Docket Coordinators
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- 6.0 Facility NPL Status Reporting, Including NFRAP Status
- 7.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that manage hazardous waste and such information is submitted by Federal agencies to EPA under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937. Additionally, the Docket contains information on Federal facilities with a reportable quantity of hazardous substances that has been released and such information is submitted by Federal agencies to EPA under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA section 101. Additionally, CERCLA section 103(c) requires facilities that have, “stored, treated, or disposed of,” hazardous wastes and where there is, “known, suspected, or likely releases,” of hazardous substances to report their activities to EPA.

CERCLA section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential

response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) to identify all Federal facilities that must be evaluated to determine whether they pose a threat to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public. Previous Docket updates are available electronically at <https://www.epa.gov/fedfac/previous-federal-agency-hazardous-waste-compliance-docket-updates>.

This document provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at <https://www.epa.gov/fedfac/doCKET-reference-manual-federal-agency-hazardous-waste-compliance-docket-interim-final> or obtained by calling the Regional Docket Coordinators listed below. This document also provides changes to the list of sites included on the Docket in three areas: (1) additions, (2) deletions, and (3) corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket.¹ The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the Federal facility is located; for a description of the information required under those provisions (See 53 FR 4280, February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each Federal facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available electronically at: <https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list> or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

- *US EPA Region 1:* Mya Winslow (HBS), 5 Post Office Square, Suite 100, Mail Code: 01–5, Boston, MA 02109–3912; telephone number: (617) 918–1594.
- *US EPA Region 2:* James Desir, 290 Broadway, New York, NY 10007–1866; telephone number: (212) 637–4342.
- *US EPA Region 3:* Connor O’Loughlin (3HS12), 1650 Arch Street, Philadelphia, PA 19107; telephone number: (215) 814–3304.
- *US EPA Region 4:* Emily Jones (9T25), 61 Forsyth St. SW, Atlanta, GA 30303, (404) 562–8334.
- *US EPA Region 5:* David Brauner (SR–6J), 77 W Jackson Blvd., Chicago, IL 60604; telephone number: (312) 886–1526.
- *US EPA Region 6:* Philip Ofosu (6SF–RA), 1201 Elm Street, Suite 500, Dallas, TX 75270; telephone number: (214) 665–3178.
- *US EPA Region 7:* Matthew Smith (SUPRERSB), 11201 Renner Blvd., Lenexa, KS 66219; telephone number: (913) 551–7527.
- *US EPA Region 8:* Ryan Dunham (EPR–F), 1595 Wynkoop Street, Denver, CO 80202; telephone number: (303) 312–6627.
- *US EPA Region 9:* Ashley Mrzljak (SFD–6–1), 600 Wilshire Boulevard, Suite 940, Los Angeles, CA 90017; telephone number: (213) 244–1839.
- *US EPA Region 10:* Brandon Perkins, 1200 Sixth Avenue, Seattle, WA 98101; telephone number: (206) 553–6396.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions, and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

These Federal facilities are being added primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). CERCLA section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable time frame for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when

evaluating the site for potential response action or listing on the NPL. This document includes one addition.

3.2 Deletions

There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket. The criteria EPA uses in deleting sites from the Docket include: a facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.*, 40 CFR 262.44); a facility that was not federally-owned or operated at the time of the listing; a facility included more than once (*i.e.*, redundant listings); or when multiple facilities are combined under one listing (See Docket Codes/Reasons for Deletion of Facilities) for a more refined list of the criteria EPA uses for deleting sites from the Docket). Facilities being deleted will no longer be subject to the requirements of CERCLA section 120(d). This document includes one deletion.

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between the Superfund Enterprise Management System (SEMS) and the Docket. For the Federal facility for which a correction is entered, the original entry is as it appeared in previous Docket updates. The corrected update is shown directly below, for easy comparison. This document includes eighteen corrections.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published in this document, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the WebEOC, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Act Information System (RCRAInfo), and SEMS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list and contacts the

¹ See section 3.2 of this document for the criteria for being deleted from the Docket.

other Federal Agency with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to contact the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this document if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have not, more than once per calendar year, generated more than 1,000 kg of hazardous waste in any single month; (3) Federal facilities that are very small quantity generators (VSQGs) that have never generated more than 100 kg of hazardous waste in any month; (4) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA section 3010; and (5) Federal facilities that have mixed mine or mill site ownership.

An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether, "mixed ownership," mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under section 103(a) of CERCLA, should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at <https://www.epa.gov/fedfac/policy-listing-mixed-ownership-mine-or-mill-sites-created-result-general-mining-law-1872>. The policy of not including these facilities may change; facilities now omitted may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA tracks the NPL status of Federal facilities listed on the Docket. An

updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available electronically at <https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list> or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this document. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The information is provided in three tables. The first table is a list of additional Federal facilities that are being added to the Docket. The second table is a list of Federal facilities that are being deleted from the Docket. The third table is for corrections.

The Federal facilities listed in each table are organized by the date reported. Under each heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.²

The statutory provisions under which a Federal facility is reported are listed in a column titled "Reporting Mechanism." Applicable mechanisms are listed for each Federal facility: for example, sections 3005, 3010, 3016 of RCRA, section 103(c) of CERCLA, or Other. "Other" has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan at 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including: (1) a report submitted in accordance with section 103(a) of CERCLA, *i.e.*, reportable quantities codified at 40 CFR part 302; (2) a report submitted to EPA in accordance with section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or State permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary

assessment, in accordance with section 105(d) of CERCLA; (7) a report submitted in accordance with section 311(b)(5) of the Clean Water Act; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained electronically at <https://www.epa.gov/fedfacts/federal-facility-cleanup-sites-searchable-list> or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this document. As of the date of this document, the total number of Federal facilities that appear on the Docket is 2,401.

7.1 Docket Codes/Reasons for Deletion of Facilities

- *Code 1.* Small-Quantity Generator and Very Small Quantity Generator. Show citation box.
- *Code 2.* Never Federally Owned and/or Operated.
- *Code 3.* Formerly Federally Owned and/or Operated but not at time of listing.
- *Code 4.* No Hazardous Waste Generated.
- *Code 5.* This code is no longer used.
- *Code 6.* Redundant Listing/Site on Facility.
- *Code 7.* Combining Sites Into One Facility/Entries Combined.
- *Code 8.* Does Not Fit Facility Definition.

7.2 Docket Codes/Reasons for Addition of Facilities

- *Code 15.* Small-Quantity Generator with either a RCRA section 3016 or CERCLA section 103 Reporting Mechanism.
- *Code 16.* One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.
- *Code 16A.* NPL site that is part of a Facility already listed on the Docket.
- *Code 17.* New Information Obtained Showing That Facility Should Be Included.
- *Code 18.* Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.
- *Code 19.* Sites Were Combined Into One Facility.
- *Code 19A.* New Currently Federally Owned and/or Operated Facility Site.

7.3 Docket Codes/Types of Corrections of Information About Facilities

- *Code 20.* Reporting Provisions Change.

² Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

• *Code 20A.* Typo Correction/Name Change/Address Change.

• *Code 21.* Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits

proof of previously performed PA, which is subject to approval by EPA).

• *Code 22.* Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal Agency submits proof of previously

performed PA, which is subject to approval by EPA).

• *Code 24.* Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

TABLE 1—FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #50—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
US EPA—GLTED	6201 CONGDON BLVD	DULUTH	MN	55804	EPA	RCRA 3010	17	UPDATE #50

TABLE 2—FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #50—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
FOOD AND DRUG ADMINISTRATION.	10903 NEW HAMPSHIRE AVE.	SILVER SPRING ..	MD	20903	HEALTH AND HUMAN SERVICES.	RCRA 3010	1	4/23/2026

TABLE 3—FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #50—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
AMES LABORATORY	117 SPEDDING HALL	AMES	IA	50011	ENERGY	CERCLA 103	20A	11/16/1988
AMES NATIONAL LABORATORY.	2408 PAMMEL DRIVE	AMES	IA	50011	ENERGY	CERCLA 103		11/16/1988
US DOE ARGONNE NATIONAL LAB.	9700 S CASS AVE	ARGONNE	IL	60439	ENERGY	RCRA 3005	20A	2/12/1988
ARGONNE NATIONAL LABORATORY.	9700 S CASS AVE	LEMONT	IL	60439	ENERGY	RCRA 3005		2/12/1988
PITTSBURGH NAVAL REACTORS OFFICE.	P.O. BOX 109	WEST MIFFLIN	PA	15122	ENERGY	RCRA 3005	20A	2/12/1988
BETTIS ATOMIC POWER LABORATORY.	814 PITTSBURGH—MCKEESPORT BOULEVARD.	WEST MIFFLIN	PA	15122	ENERGY	RCRA 3005		2/12/1988
FERMI NATL ACCELERATOR LAB.	RTE 16 & 59	BATAVIA	IL	60510	ENERGY	RCRA 3005	20A	2/12/1988
FERMI NATIONAL ACCELERATOR LABORATORY.	KIRK RD & PINE ST, P.O. BOX 2000.	BATAVIA	IL	60510	ENERGY	RCRA 3005		2/12/1988
KNOLLS ATOMIC POWER LABORATORY.	KESSELRING SITE	WEST MILTON	NY	12020	ENERGY	RCRA 3005	20A	2/12/1988
KNOLLS ATOMIC POWER LABORATORY—KESSLER SITE.	350 WM PROJECT ROAD	WEST MILTON	NY	12020	ENERGY	RCRA 3005		2/12/1988
KNOLLS ATOMIC POWER LABORATORY.	RIVER RD	NISKAYUNA	NY	12309	ENERGY	RCRA 3005	20A	2/12/1988
KNOLLS ATOMIC POWER LABORATORY—KNOLLS LABORATORY.	2401 RIVER RD	NISKAYUNA	NY	12309	ENERGY	RCRA 3005		2/12/1988
LAWRENCE BERKELEY LABORATORY.	1 CYCLOTRON RD	BERKELEY	CA	94720	ENERGY	RCRA 3005	20A	2/12/1988
LAWRENCE BERKELEY NATIONAL LABORATORY.	1 CYCLOTRON RD	BERKELEY	CA	94720	ENERGY	RCRA 3005		2/12/1988
USDOJ BM ALBANY RESEARCH CTR.	1450 SW QUEEN AVE	ALBANY	OR	97321	ENERGY	RCRA 3010	20A	2/12/1988
NATIONAL ENERGY TECHNOLOGY LABORATORY (ALBANY).	1450 SW QUEEN AVE	ALBANY	OR	97321	ENERGY	RCRA 3010		2/12/1988
MORGANTOWN ENERGY TECHNOLOGY CTR.	COLLINS FERRY RD	MORGANTOWN ..	WV	26505	ENERGY	RCRA 3010	20A	11/16/1988
NATIONAL ENERGY TECHNOLOGY LABORATORY (MORGANTOWN).	3610 COLLINS FERRY ROAD.	MORGANTOWN ..	WV	26505	ENERGY	RCRA 3010		11/16/1988
PITTSBURGH ENERGY TECHNOLOGY CENTER.	PO BOX 10940	PITTSBURGH	PA	15236	ENERGY	RCRA 3016	20A	7/1/2002
NATIONAL ENERGY TECHNOLOGY LABORATORY (PITTSBURGH).	626 WALLACE ROAD, SOUTH PARK TOWNSHIP.	PITTSBURGH	PA	15236	ENERGY	RCRA 3016		7/1/2002
NATIONAL RENEWABLE ENERGY LABORATORY.	1617 COLE BLVD	GOLDEN	CO	80401	ENERGY	RCRA 3005	20A	2/12/1988
NATIONAL LABORATORY OF THE ROCKIES.	1617 COLE BLVD	GOLDEN	CO	80401	ENERGY	RCRA 3005		2/12/1988
NATIONAL WIND TECHNOLOGY CENTER.	18200 STATE HIGHWAY 128.	GOLDEN	CO	80007	ENERGY	RCRA 3016	20A	7/1/2002

TABLE 3—FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #50—DELETIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code	Date
NATIONAL LABORATORY OF THE ROCKIES (FLATIRONS CAMPUS).	190001 W 119TH AVE	ARVADA	CO	80007	ENERGY	RCRA 3016		7/1/2002
USDOE OFFICE OF SCIENCE PNNL SITE.	3335 INNOVATION BLVD ..	RICHLAND	WA	99354	ENERGY	RCRA 3010	20A	2/18/2013
PACIFIC NORTHWEST NATIONAL LABORATORY RICHLAND CAMPUS.	3335 INNOVATION BLVD ..	RICHLAND	WA	99354	ENERGY	RCRA 3010		2/18/2013
PRINCETON PLASMA PHYSICS LABOR.	FORRESTAL CAMPUS	PRINCETON	NJ	08540	ENERGY	CERCLA 103	20A	2/5/1993
PRINCETON PLASMA PHYSICS LABORATORY.	100 STELLARATOR ROAD	PRINCETON	NJ	08540	ENERGY	CERCLA 103		2/5/1993
STANFORD LINEAR ACCELERATOR CTR (USDOE).	2575 SAND HILL RD	MENLO PARK	CA	94025	ENERGY	RCRA 3010	20A	2/12/1988
SLAC NATIONAL ACCELERATOR LABORATORY.	2575 SAND HILL RD	MENLO PARK	CA	94025	ENERGY	RCRA 3010		2/12/1988
SPRING BIG HILL	23 MI SW OF PT. ARTHUR	PORT ARTHUR ..	TX	77665	ENERGY	CERCLA 103	20A	11/16/1988
SPR BIG HILL SITE	24784 BIG HILL ROAD	WINNIE	TX	77665	ENERGY	CERCLA 103		11/16/1988
WEST HACKBERRY SPRING.	3.8 MI W OF HACKBERRY, HWY 390.	HACKBERRY	LA	70645	ENERGY	CERCLA 103	20A	9/27/1991
SPR WEST HACKBERRY SITE.	1450 BLACK LAKE ROAD	HACKBERRY	LA	70645	ENERGY	CERCLA 103		9/27/1991
WASTE ISOLATION PILOT PLANT.	32 MI SE OF CARLSBAD OFF JAC. HWY..	CARLSBAD	NM	88256	ENERGY	RCRA 3005	20A	2/5/1993
WASTE ISOLATION PILOT PLANT.	26 MI E OF CARLSBAD, NM (LOS MEDAÑOS.	CARLSBAD	NM	88256	ENERGY	RCRA 3005		2/5/1993

Michaela Noble,

Deputy Director of Federal Facilities and Operations, Office of Superfund and Emergency Management, Office of Land and Emergency Management.

[FR Doc. 2026–22064 Filed 10–28–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0442–0002; FRL–13682–OFA]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Microbial Rules (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Microbial Rules (EPA ICR Number 1895.12, OMB Control Number 2040–0205) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2026. Public comments were previously requested via the **Federal Register** on June 22, 2026, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before November 30, 2026.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2011–0442–0002, to EPA online using www.regulations.gov (our preferred method), by email to OW-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Brooke Holmes, Capacity and Compliance Assistance Division, Office of Ground Water and Drinking Water, 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2508; fax number:

202–564–3754; email address: holmes.brooke@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through October 31, 2026. 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.

Public comments were previously requested via the **Federal Register** on June 22, 2026 during a 60-day comment period (91 FR 37109). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The Microbial Rules ICR examines public water system and primacy agency burden and costs for recordkeeping and reporting requirements in support of the microbial drinking water regulations. These recordkeeping and reporting requirements are mandatory for compliance with 40 CFR parts 141 and 142.

The following microbial regulations are included under the ICR: the Surface

Water Treatment Rule, the Total Coliform Rule, the Revised Total Coliform Rule, the Interim Enhanced Surface Water Treatment Rule, the Filter Backwash Recycling Rule, the Long Term 1 Enhanced Surface Water Treatment Rule, the Long Term 2 Enhanced Surface Water Treatment Rule, the Ground Water Rule, and the Aircraft Drinking Water Rule. Future microbial-related rulemakings will be added to this consolidated ICR after the regulations are promulgated as part of the extension of initial, rule-specific, ICRs.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are public water systems and primacy agencies.

Respondent's obligation to respond: Mandatory for compliance with 40 CFR parts 141 and 142.

Estimated number of respondents: 144,491 (total).

Frequency of response: Varies by requirement (*i.e.*, on occasion, monthly, quarterly, semi-annually, and annually).

Total estimated burden: 14,873,334 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$988,370,000 (per year), which includes \$219,520,000 annualized capital or operation & maintenance costs.

Changes in the estimates: There is a net decrease of 147,377 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This reflects a decrease of 187,587 hours for public drinking water system (PWS) activities largely related to Revised Total Coliform Rule (RTCR) initial implementation. This also reflects an increase of 4,129 hours for air carrier activities due to updated aircraft and 36,081 for primacy agencies.

There has been a substantial decrease in the estimated labor costs, which reflect the correction of typographical errors in the currently approved ICR (see section 15 "Change in Burden" of the associated Supporting Statement) for more information.

Courtney Kerwin,

Deputy Director, Data & Enterprise Programs Division.

[FR Doc. 2026-22056 Filed 10-28-26; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-13656-01-R5]

Notice of Charter Renewal and Request for Nominations for the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal and request for nominations for the Great Lakes Advisory Board.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), the EPA Great Lakes Advisory Board (GLAB) is a necessary committee which is in the public's interest. Accordingly, the Advisory Board will be renewed for an additional two-year period. In addition, EPA is seeking member nominations for the GLAB from qualified candidates to serve a two-year term. The purpose of the GLAB is to provide advice and recommendations to the EPA Administrator through the Great Lakes National Program Manager on matters related to the Great Lakes Restoration Initiative and on domestic matters related to the implementation of the Great Lakes Water Quality Agreement. The Advisory Board's major objectives are to provide advice and recommendations on: Great Lakes protection and restoration activities; long term goals, objectives and priorities for Great Lakes protection and restoration; and other issues identified by the Great Lakes Interagency Task Force/Regional Working Group.

DATES: Nominations for the GLAB must be submitted by January 15, 2027.

FOR FURTHER INFORMATION CONTACT: Alana Davicino, Designated Federal Officer, Great Lakes National Program Office, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, (G-9J), Chicago, Illinois; telephone number: 312-886-2307, email address: davicino.alana@epa.gov.

SUPPLEMENTARY INFORMATION:

Background: The GLAB was established in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. 10) and 41 CFR 102-3.50(d). The board will provide advice and recommendations on matters related to the Great Lakes Restoration Initiative. The board will also advise on domestic matters related to implementation of the Great Lakes Water Quality Agreement between the U.S. and Canada.

The major objectives will be to provide advice and recommendations on:

- a. Great Lakes protection and restoration activities;
- b. Long term goals, objectives, and priorities for Great Lakes protection and restoration; and
- c. Other issues identified by the Great Lakes Interagency Task Force/Regional Working Group.

The GLAB is expected to meet in person or by electronic means (*e.g.*, telephone, videoconference, webcast, etc.) approximately two (2) times per year, or as otherwise needed and approved by the Designated Federal Officer. In-person meetings will be held in the Great Lakes region.

Nominations: The GLAB will be composed of approximately fifteen (15) members who will serve as representative members of non-Federal interests. In selecting members, EPA will consider candidates representing a broad range of Great Lakes stakeholders, including, but not limited to: Environmental groups; agricultural groups; industry and/or business groups; citizen groups; foundations; academia; and State, local and Tribal governments. In selecting members, EPA will consider the differing perspectives and breadth of collective experience needed to address the GLAB's charter. Other criteria used to evaluate nominees will include:

- Experience with Great Lakes issues;
- Leadership and consensus-building experience in Great Lakes organizations, businesses, and workgroups;
- Membership in professional societies involved with Great Lakes issues;
- Academic leadership and expertise;
- Community leadership; and
- Representation of multiple constituencies within the Great Lakes basin.

How To Submit Nominations

Any interested person or organization may nominate qualified persons to be considered for appointment to the GLAB. Individuals may self-nominate. For appointment consideration, interested nominees should submit the application materials electronically via email to davicino.alana@epa.gov with the subject line "GLAB Nominations 2027".

To be considered, nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address and daytime phone number;

- A brief statement describing the nominee's interest in serving on the GLAB;
- A resume and a short biography (no more than two paragraphs) describing the professional and educational qualifications of the nominee, including a list of relevant activities and any current or previous service on Federal advisory committees; and
- A description of the nominee's EPA grant funding history including current EPA grant activities if applicable. If this does not apply to the nominee, please provide a brief statement indicating so.
- *Optional:* Letter(s) of recommendation from a third party supporting the nomination. Letter(s) should describe how the nominee's experience and knowledge will bring value to the work of the GLAB.

To help the Agency evaluate the effectiveness of its outreach efforts, nominees are requested to use their submission packages to identify how they became aware of this request for nominations.

Public Interest Determination

Pursuant to 41 CFR 102–3.65, this notice, announcing that the GLAB is being renewed, must include the written public interest determination (PID) approved by the head of the agency described in 41 CFR 102–3.60(a) and any assessment provided by the General Services Administration's Committee Management Secretariat (the Secretariat). The PID included in this Unit has been provided to the Secretariat. The Secretariat has approved this PID without comment or assessment.

Pursuant to 41 U.S.C. 102–3.60(a), to establish, renew, reestablish, or merge a discretionary (agency discretion) advisory committee, an agency must first consult with the Secretariat and, as part of the consultation, provide a written public interest determination approved by the head of the agency to the Secretariat with a copy to the Office of Management and Budget. In addition, pursuant to 41 U.S.C. 102–3.35, an agency shall follow the same consultation process and document in writing the same determination of need before creating a subcommittee under a discretionary committee that is not made up entirely of members of a parent advisory committee. Information on the following factors for the committee was provided to the Secretariat to demonstrate that reestablishing the committee is in public interest:

1. *Annual budget:* The estimated Annual Budget for the GLAB is \$129,389. The estimated annual federal personnel on a full-time equivalent

(FTE) basis is 0.5 FTE. The estimate for other Federal internal costs is \$32,139. The GLAB will be composed of approximately 15 representative members who will not be paid.

2. *If applicable, the total dollar value of grants expected to be recommended during the fiscal year is:* N/A.

3. *Criteria for selecting members to ensure the committee has the necessary expertise and fairly balanced membership:* In selecting members, EPA will consider candidates from a broad range of interests relating to the Great Lakes, including but not limited to, state, Tribal, and local governments, environmental groups, industry, business groups, agricultural groups, foundations, and academia.

4. *List of all other Federal advisory committees of the agency:*

Science Advisory Committee on
Chemicals
National Environmental Education
Advisory Council
National Drinking Water Advisory
Council
Local Government Advisory Committee
Human Studies Review Board
Hazardous Waste Electronic Manifest
System Advisory Board
Good Neighbor Environmental Board
Federal Insecticide, Fungicide, and
Rodenticide Act Scientific Advisory
Panel
Farm, Ranch, and Rural Communities
Advisory Committee
EPA Science Advisory Board
Environmental Financial Advisory
Board
Clean Air Scientific Advisory
Committee
Children's Health Protection Advisory
Committee
Pesticide Program Dialogue Committee

5. *Justification that the information or advice provided by the Federal advisory committee or subcommittee is not available from another Federal advisory committee, another Federal Government source, or any other more cost-effective and less burdensome source:* The GLAB provides EPA with the collective recommendations of state and local governments, Tribes and other Great Lakes interests to more effectively carry out Great Lakes restoration. There are no other existing EPA advisory committees that have a mission to advise on protecting and restoring the Great Lakes. Likewise, existing committees do not have the breadth of experience that is needed to inform the Agency on Great Lakes environmental issues from various viewpoints. Bringing together a cross-section of individuals with the needed range of experience and perspectives facilitates a more effective

discussion of the technical issues and policy options that will support adequate evaluation of, and input into, EPA positions and actions.

6. *If the consultation is a committee renewal, a summary of the previous accomplishments of the committee and the reasons it needs to continue:* The GLAB did not convene in the previous Fiscal Year, but will be refocused and updated for FY27 and upcoming FYs. Accomplishments from previous GLABs include reports with specific, actionable near-term and long-term recommendations for EPA regarding pressing Great Lakes issues.

7. *Explanation of why the committee/subcommittee is essential to the conduct of agency business:* The Great Lakes Advisory Board (GLAB) supports the EPA in achieving the restoration and protection goals of the Great Lakes Restoration Initiative (GLRI) as outlined in Section 118 of the Clean Water Act. The Great Lakes is a vast, shared resource and protecting and restoring them requires the collective ideas and experience of the Great Lakes community. The GLAB provides a forum where EPA can have the full benefit of the ideas and experience of both government and non-governmental partners.

In conclusion, this public interest determination documents that renewing the committee is in the public interest, essential to the conduct of agency business, and that the information to be obtained is not already available through another advisory committee or source within the Federal Government.

Dated: October 19, 2026.

Anne Vogel,

Regional Administrator, Region 5.

[FR Doc. 2026–22059 Filed 10–28–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0081; FRL–13683–01–OFA]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an

information collection request (ICR), Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123 (EPA ICR Number 1425.15, OMB Control Number 2050–0077) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2026. Public comments were previously requested via the **Federal Register** on April 23, 2026 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before November 30, 2026.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OLEM–2018–0081, to EPA online using www.regulations.gov (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Miranda Magdangal, Response Readiness and Development Division, Office of Superfund and Emergency Management, MC–5101–T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (240) 618–0660; email address: magdangal.miranda@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through October 31, 2026. 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.

Public comments were previously requested via the **Federal Register** on April 23, 2026 during a 60-day comment period (91 FR 21809). This notice allows

for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The Agency requires applicants for reimbursement under this program authorized under section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit.

Form Numbers: 9310–1.

Respondents/affected entities: Entities potentially affected by this action are local governments that apply for reimbursement under this program.

Respondent's obligation to respond: Required to Obtain or Retain Benefits (CERCLA section 123).

Estimated number of respondents: 15.

Frequency of response: On occasion.

Total estimated burden: 131.25 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$5,906.25 (per year), which includes \$0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is a decrease of 39 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. While the individual respondent burden hours have slightly increased, the overall respondent burden has decreased due to fewer applications expected annually. Some minor changes were made to the application form. These changes are considered adjustments.

Courtney Kerwin,

Deputy Director, Data and Enterprise Programs Division.

[FR Doc. 2026–22065 Filed 10–28–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–13417–01–OMS]

Cross-Media Electronic Reporting: Announcement of Determination To Approve Authorized Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of requests to revise/modify EPA-authorized programs to allow electronic reporting from Arkansas Energy and Environment (E&E), Arizona Department of Environmental Quality (AZDEQ), Connecticut Department of Energy and Environmental Protection (CT DEEP), Delaware Department of Technology & Information—Department of Natural Resources and Environmental Control (DTI–DNREC), Iowa Department of Natural Resources (IDNR), Idaho Department of Environmental Quality (IDEQ), Indiana Department of Environmental Management (IDEM), Kentucky Department of Water (DOW), Louisville Metro Air Pollution Control District (LMAPCD), Maryland Department of Environment (MDE), Mecklenburg County Air Quality, Mississippi Department of Environmental Quality (MDEQ), Montana Department of Environmental Quality (DEQ), North Carolina Department of Environmental Quality (NCDEQ), Nebraska Department of Environment and Energy (NDEE), Nevada Division of Environmental Protection (NDEP), Oregon Department of Environmental Quality (DEQ), Tennessee Department of Environmental Conservation (TNDEC), and Wyoming Department of Environmental Quality (DEQ).

FOR FURTHER INFORMATION CONTACT: Dorothy Slaughter; U.S. Environmental Protection Agency; telephone number: (919) 541–2176; email address: slaughter.dorothy@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848, October 13, 2005) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that

State, Tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, Tribe, or local government will use to implement electronic reporting. Additionally, section 3.1000(b) through

(e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the State, Tribe or local government has sufficient legal authority to implement the electronic reporting components of the

programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

In accordance with 40 CFR 3.1000(d), this **Federal Register** notice announces EPA's determination that applications from the following State and local governing bodies to revise/modify their EPA-authorized programs to allow electronic reporting under 40 CFR met the standards for approval under 40 CFR part 3, subpart D.

TABLE 1—APPLICATIONS APPROVED UNDER 40 CFR PART 3, SUBPART D

Requestor	System/tool	Permission granted for programs under
Arkansas Energy and Environment (E&E).	SEEK	<ul style="list-style-type: none"> • Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under 40 CFR 50 through 52. • Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under 40 CFR 60 and 65. • Part 62: Approval and Promulgation of State Plans for Designated Facilities and Pollutants (NSPS/Clean Air Act Title III—Hospital/Medical) Reporting under CFR 60 and 65. • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 145: State Underground Injection Control Programs (UIC) Reporting under 40 CFR 144 and 146. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403 through 471. • Part 239: Requirements for State Permit Program Determination of Adequacy (RCRA Subtitle C) Reporting under 40 CFR 240 through 259. • Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under 40 CFR 260 through 270 and 272 through 279. • Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under 40 CFR 280. • Part 763: Asbestos Reporting under 40 CFR 763.
Arizona Department of Environmental Quality (AZDEQ).	Combined Air Emissions Reporting System (CAERS).	<ul style="list-style-type: none"> • Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under 40 CFR 50 through 52. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 501: State Sludge Management Program Regulations Reporting under 40 CFR 503. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 239: Requirements for State Permit Program Determination of Adequacy (RCRA Subtitle C) Reporting under 40 CFR 240 through 259. • Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under 40 CFR 260 through 270 and 272 through 279. • Part 763: Asbestos Reporting under 40 CFR 763. • Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under 40 CFR Parts 60 and 65.
Arizona Department of Environmental Quality (AZDEQ).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	
Connecticut Department of Energy and Environmental Protection (CT DEEP).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	<ul style="list-style-type: none"> • Part 239: Requirements for State Permit Program Determination of Adequacy (RCRA Subtitle C) Reporting under 40 CFR 240 through 259. • Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under 40 CFR 260 through 270 and 272 through 279. • Part 763: Asbestos Reporting under 40 CFR 763. • Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under 40 CFR Parts 60 and 65.
Delaware Department of Technology & Information—Department of Natural Resources and Environmental Control (DTI—DNREC).	ePermitting/Digital DNREC	
Iowa Department of Natural Resources (IDNR).	Air Quality Records and Compliance Reporting (AQRR) System.	

TABLE 1—APPLICATIONS APPROVED UNDER 40 CFR PART 3, SUBPART D—Continued

Requestor	System/tool	Permission granted for programs under
Idaho Department of Environmental Quality (IDEQ).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	<ul style="list-style-type: none"> • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR Parts 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR Part 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 501: State Sludge Management Program Regulations Reporting under 40 CFR 503. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under 40 CFR 60 & 65. • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under 40 CFR 50 through 52. • Part 52: Approval and Promulgation of Implementation Plans (SIP/Clean Air Act Title II) Reporting under 40 CFR 50 through 52. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under 40 CFR 260 through 270 and 272 through 279. • Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under 40 CFR 280. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under 40 CFR 60 and 65. • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125.
Indiana Department of Environmental Management (IDEM).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	
Kentucky Department of Water (DOW).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	
Louisville Metro Air Pollution Control District (LMAPCD).	State and Local Emissions Inventory System (SLEIS).	
Maryland Department of Environment (MDE).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	
Mecklenburg County Air Quality	Mecklenburg Air Information Resource (MeckAIR).	
Mississippi Department of Environmental Quality (MDEQ).	Combined Air Emissions Reporting System (CAERS).	
Montana Department of Environmental Quality (DEQ).	Combined Air Emissions Reporting System (CAERS).	
North Carolina Department of Environmental Quality (NCDEQ).	The Access DEQ Portal	
Nebraska Department of Environment and Energy (NDEE).	National Pollutant Discharge Elimination System Electronic Reporting Tool (NPDES NeT).	
Nevada Division of Environmental Protection (NDEP).	nForm Portal	<ul style="list-style-type: none"> • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403. • Part 123: EPA-Administered Permit Programs: the National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125. • Part 60: Standards of Performance for New Stationary Sources (NSPS/CAR/Clean Air Act Title III) Reporting under 40 CFR 60 and 65. • Part 63: National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP MACT/Clean Air Act Title III) Reporting under 40 CFR 61, 63, and 65. • Part 70: State Operating Permit Programs (Clean Air Act Title V) Reporting under 40 CFR 70. • Part 123: EPA-Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) Reporting under 40 CFR 122 and 125.
Oregon Department of Environmental Quality (DEQ).	Environmental Data Management System (EDMS).	

TABLE 1—APPLICATIONS APPROVED UNDER 40 CFR PART 3, SUBPART D—Continued

Requestor	System/tool	Permission granted for programs under
Tennessee Department of Environmental Conservation (TDEC). Wyoming Department of Environmental Quality (DEQ).	TNDEC Combined Air Emissions Reporting System (CAERS). Mining Information Database System (MIDAS).	<ul style="list-style-type: none"> • Part 145: State Underground Injection Control Programs (UIC) Reporting under 40 CFR 144 and 146. • Part 239: Requirements for State Permit Program Determination of Adequacy (RCRA Subtitle C) Reporting under 40 CFR 240 through 259. • Part 271: Requirements for Authorization of State Hazardous Waste Programs (RCRA Subtitle C) Reporting under 40 CFR 260 through 270 and CFR 272 through 279. • Part 281: Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) Reporting under 40 CFR 280. • Part 403: General Pretreatment Regulations for Existing and New Sources of Pollution Reporting under 40 CFR 403 through 471. • Part 763: Asbestos Reporting under 40 CFR 763. • Part 52: Approval and Promulgation of Implementation Plans (SIP/ Clean Air Act Title II) Reporting under 40 CFR 50 through 52. • Part 145: State Underground Injection Control Programs (UIC) Reporting under 40 CFR 144 and 146.

Willie Abney,

Deputy Director, Cybersecurity, Privacy & Risk Management Division (CPRMD).

[FR Doc. 2026–22066 Filed 10–28–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2026–1552; FRL–13689–01–OFA]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Underground Storage Tank Finder Application (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Underground Storage Tank Finder Application (EPA ICR Number 2696.02, OMB Control Number 2080–0086) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2026. Public comments were previously requested via the **Federal Register** on March 12, 2026 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before November 30, 2026.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OLEM–2026–1552 to EPA online

using www.regulations.gov (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Elizabeth McDermott, Office of Underground Storage Tanks, Mail Code 5401T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–0646; email address: mcdermott.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through October 31, 2026. 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.

Public comments were previously requested via the **Federal Register** on March 12, 2026 during a 60-day comment period (91 FR 12194). This notice allows for an additional 30 days for public comments. Supporting

documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: This ICR is a renewal of the previously approved UST Finder ICR (No. 2696.01; OMB No. 2080–0086) to update the UST Finder application on a semiannual basis. To successfully maintain and improve the data quality and usability of UST Finder, the Agency seeks to continue gathering, on a voluntary basis, location and other relevant data about USTs and LUSTs that are currently collected and managed by states and territories. The application may be used for many purposes, such as helping regulators, owners, and operators in decision-making; prioritizing site cleanups or inspections; triaging risk; and identifying sites that may be more likely to have a release based on UST age and substance stored. The application may also be used by emergency response personnel to protect UST facilities from extreme weather events. After disasters, the UST Finder can be used to rapidly identify LUST site cleanups impacted by natural disasters and assist in restarting cleanups after these events.

Form Numbers: None.

Respondents/affected entities: The respondents for the information collection activity are state and territorial delegated agencies. The United States Standard Industrial Classification (SIC) code for the

respondents is SIC 9511, which corresponds to the North American Industry Classification System (NAICS) 924110 for Administration of Air and Water Resource and Solid Waste Management Programs. Source compliance data assembled by delegated agencies covers numerous NAICS categories.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 56 (total).

Frequency of response: Semiannual.

Total estimated burden: 989 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$72,475 (per year), which includes \$1,067 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 2481 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the following factors.

- Most respondents have previously submitted data and will not require any time to set up their data delivery option. Thus, they will only incur a burden to submit the semi-annual data updates unless they choose to set up a new option.

- The last information collection was conducted prior to the first round of data collection for UST Finder, so the burden calculated in the previous ICR were based on estimates for respondents who had not yet submitted data. This uncertainty led to overestimated burden.

- EPA estimates the burden calculations in this ICR based on hours estimates provided by state agencies in the consultations conducted by EPA. Some of the responses indicated that the data set-up and semiannual update burden estimates were lower than previous estimates due to respondents' increased familiarity with the requirements of the data collection.

- The previous ICR considered subcontractor labor hours as part of the annual burden; however, this ICR considers subcontractor labor as a one-time capital cost to set up data delivery options.

Courtney Kerwin,

Deputy Director, Data and Enterprise Programs Division.

[FR Doc. 2026-22061 Filed 10-28-26; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OFA-2026-3038; FRL-13339-01-OMS]

Privacy Act of 1974; System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rescindment of a system of records notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 8 (R8) is giving notice that it proposes to rescind a system of records pursuant to the provisions of the Privacy Act. The Libby Asbestos Exposure Assessment Records System of Records is being rescinded because R8 is no longer using the System as defined in the Privacy Act.

DATES: EPA Region 8 stopped maintaining this system of records in August 2010. Comment on this system of records notice must be received on or before November 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OFA-2026-3038, by one of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Email: doctet_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OFA-2026-3038. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through <https://www.regulations.gov>. The <https://www.regulations.gov> website is an "anonymous access" system for the

EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>,

your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OMS Docket is (202) 566-1752. Further information about EPA Docket Center services and current operating status is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Mission Support Division, Information Management Branch, R8. ATTN: Liaison Privacy Official, 1595 Wynkoop Street, Denver, CO 80202.

SUPPLEMENTARY INFORMATION: In 2001, EPA was directed to investigate and respond to conditions at the Libby Asbestos Superfund Site, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Due to the urgency and complexity of the situation, EPA R8 was provided with a drive with exposure assessments records. Since August 2010, the data has remained inactive; the

drive/information has not been accessed, shared, or subject to any information requests. Upon rescission, the records will be secured and maintained in accordance with EPA Record Schedule 014, and any applicable litigation requirements.

SYSTEM NAME AND NUMBER:

Libby Asbestos Exposure Assessment Records, EPA-48.

HISTORY:

66 FR 49947 (October 1, 2001).

Jennifer Campbell,

Acting Chief Information Officer, Senior Agency Official for Privacy.

[FR Doc. 2026-22060 Filed 10-28-26; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Informational Meeting

SUMMARY: Notice of the forthcoming Farm Credit Administration informational meeting is hereby given.

DATES: 10 a.m., Thursday, November 5, 2026.

ADDRESSES: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or virtually. If you would like to observe, at least 24 hours in advance, visit [FCA.gov](https://www.fca.gov), select “Newsroom,” then select “Events.” From there, access the linked “Instructions for meeting visitors” and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703-883-4009. TTY: 703-883-4056.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. The following matters will be considered:

- Report on the Farm Credit Administration’s Deregulatory Review
- Update on Farm Credit System Funding Conditions

Authority: 12 U.S.C. 2242 Sec. 5.8(c).

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2026-22058 Filed 10-28-26; 8:45 am]

BILLING CODE 6705-01-P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA-5—Assignments and Communication Tracking System—FCA. The Assignments and Communication Tracking System—FCA system is used to track draft correspondence and other memoranda, employee assignments, and notes from oral and written correspondence and communications between FCA and FCSIC staff and external parties. This information is used for reference and aids Agency management in its deliberations. The Agency is updating the notice to reflect changes to the system name, the categories of individuals, the records maintained in the system, the record source categories, the system purpose, and the Policies and Practices for Storage of Records’ and the Administrative, Technical, and Physical Safeguards’ sections. Additionally, a modification to a routine use for the system has been made.

DATES: You may send written comments on or before November 28, 2026. The FCA filed an amended System Report with Congress and the Office of Management and Budget on October 29, 2026. This notice will become effective without further publication on December 8, 2026, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: For accuracy and efficiency, please submit comments by email or through FCA’s website. We do not accept comments submitted by fax because faxes are difficult to process. Also, please do not submit comments multiple times; submit your comment only once, using one of the following methods:

- Send an email to reg-comm@fca.gov.
- Use the public comment form on our website:
 1. Go to <https://www.fca.gov>.
 2. Click inside the “I want to . . .” field near the top of the page.
 3. Select “comment on a pending regulation” from the dropdown menu.
 4. Click “Go.” This takes you to the comment form.

• *Send the comment by mail to the following:* Autumn R. Agans, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

We post all comments on the FCA website. We will show your comments as submitted, including any supporting

information; however, for technical reasons, we may omit items such as logos and special characters. Personal information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

To review comments on our website, go to <https://www.fca.gov> and follow these steps:

1. Click inside the “I want to . . .” field near the top of the page.
2. Select “find comments on a pending regulation” from the dropdown menu.
3. Click “Go.” This will take you to a list of regulatory projects.
4. Select the project in which you’re interested. If we have received comments on that project, you will see a list of links to the individual comments.

You may also review comments at the FCA office in McLean, Virginia. Please call us at 703-883-4056 or email us at reg-comm@fca.gov to make an appointment.

FOR FURTHER INFORMATION CONTACT:

Jackie Baker, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4148, TTY (703) 883-4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 (5 U.S.C. 552a) that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The substantive changes and modifications to the currently published version of FCA-5—Assignments and Communication Tracking System—FCA include:

1. Modifying the system name to better reflect the purpose of the system.
2. Revising and clarifying the system’s purpose.
3. Revising and clarifying the categories of individuals maintained in the system.
4. Revising and clarifying the categories of records maintained in the system.
5. Revising and clarifying the record source categories.
6. Revising the Policies and Practices for Storage of Records’ and the Administrative, Technical, and Physical Safeguards’ sections to reflect the transition from physical to electronic records and updated cybersecurity guidance and practices.
7. Modifying a routine use which allows for the disclosure of records to the public and the news media.

The amended system of records is: FCA-5—Assignments, Correspondence,

and Communication Tracking System—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA-5—Assignments, Correspondence, and Communication Tracking System—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SYSTEM MANAGER(S):

Chief Operating Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S) OF THE SYSTEM:

Information in this records system is used to: (1) track employee assignments; (2) make appropriate portions of the records in FCA matters available to the public; (3) enable members of the public to review and comment on or respond to such comments; (4) track draft correspondence and other memoranda; and (5) facilitate, track, and maintain records of oral and written communications and correspondence between FCA and FCSIC staff and external parties, including the public. Information in this system is also used for reference and aids Agency management in its deliberations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit correspondence or have correspondence submitted on their behalf to FCA or FCSIC, or who request to receive correspondence from FCA or FCSIC, as well as FCA and FCSIC employees, contractors, and interns assigned to the management of or responding to such correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains incoming and outgoing correspondence, letters, internal reports and memoranda, and other similar documents pertaining to FCA's and FCSIC's operations, and communication logs. In addition to non-

public correspondence, this system includes public comments and other records that an individual may submit in an agency matter, such as a notice of rulemaking. Information includes, but is not limited to: (1) correspondence received and sent by FCA or FCSIC; (2) mailing lists or similar lists of contact information of individuals who submit correspondence, have correspondence submitted on their behalf, or request to receive correspondence from FCA or FCSIC, including name, home or work address, personal or work email address, home, work or cellular phone number, employer, and title; (3) information pertaining to the correspondence, including status or disposition, type of correspondence (letter, fax, email), associated dates and times received or sent, and any other information relayed in the body of the correspondence; and (4) information pertaining to the FCA or FCSIC employees responsible for processing the correspondence, including name, title, and information about internal assignments.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from individuals who submit correspondence or have correspondence submitted on their behalf to the FCA or FCSIC, FCA and FCSIC employees and contractors, Farm Credit System Institutions, and other external parties, including the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the "General Statement of Routine Uses" (85 FR 31495). The information collected in the system will be used in a manner that is compatible with the purposes for which the information has been collected and, in addition to the applicable general routine uses, may be disclosed for the following purposes:

(1) We may disclose certain information in this system of records to the public and the news media in accordance with applicable law. Information disclosed may include identifying information provided in public comments and other records that an individual submits on an agency matter, such as names, phone numbers and addresses.

Disclosure to consumer reporting agencies:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders and on a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, email address, Farm Credit District, subject, or some combination thereof.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the FCA Comprehensive Records Schedule and National Archives and Records Administration regulations. FCA destroys physical and electronic copies of the data after six years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with a valid need-to-know in support of their official duties. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURES:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102-5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

64 FR 21879.
85 FR 34436.

Ashley Waldron,

Secretary to the Board, Farm Credit Administration.

[FR Doc. 2026-22075 Filed 10-28-26; 8:45 am]

BILLING CODE 6705-01-P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Rescindment of a System of Records Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended,

notice is hereby given that the Farm Credit Administration (FCA or Agency) is rescinding the System of Records Notice, FCA–13—Correspondence Files—FCA. This information system is used to track incoming and outgoing correspondence, draft correspondence, and other memoranda, and is duplicative of information maintained in another system of records, FCA–5—Assignments and Communication Tracking System—FCA.

DATES: You may send written comments on or before November 28, 2026. The proposed action will become effective without further publication on December 8, 2026, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: For accuracy and efficiency, please submit comments by email or through FCA’s website. We do not accept comments submitted by fax because faxes are difficult to process. Also, please do not submit comments multiple times; submit your comment only once, using one of the following methods:

- Send an email to *reg-comm@fca.gov*.
- Use the public comment form on our website:
 1. Go to <https://www.fca.gov>.
 2. Click inside the “I want to . . .” field near the top of the page.
 3. Select “comment on a pending regulation” from the dropdown menu.
 4. Click “Go.” This takes you to the comment form.
- *Send the comment by mail to the following:* Autumn R. Agans, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

We post all comments on the FCA website. We will show your comments as submitted, including any supporting information; however, for technical reasons, we may omit items such as logos and special characters. Personal information that you provide, such as phone numbers and addresses, will be

publicly available though we will attempt to remove email addresses to help reduce internet spam.

To review comments on our website, go to <https://www.fca.gov> and follow these steps:

1. Click inside the “I want to . . .” field near the top of the page.
2. Select “find comments on a pending regulation” from the dropdown menu.
3. Click “Go.” This will take you to a list of regulatory projects.
4. Select the project in which you’re interested. If we have received comments on that project, you will see a list of links to the individual comments.

You may also review comments at the FCA office in McLean, Virginia. Please call us at 703–883–4056 or email us at *reg-comm@fca.gov* to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jackie Baker, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4148, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 (5 U.S.C. 552a) and subsequent guidance from the Office of Management and Budget that agencies publish in the **Federal Register**, notice of rescission of a System of Records Notice when an agency stops maintaining a previously established system of records. A review of the System of Records Notice, FCA–13—Correspondence Files—FCA, was conducted in September of 2026. The Agency determined that a separate system for managing correspondence files is no longer necessary, as the records contained in the system are duplicative of another system of records, FCA–5—Assignments and Communication Tracking System—FCA.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this action to the Office of Management and Budget, the

Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

SYSTEM NAME AND NUMBER:
FCA–13—Correspondence Files—FCA.

HISTORY
64 FR 21875.
85 FR 49369.
91 FR 33171.

Ashley Waldron,
Secretary to the Board, Farm Credit Administration.
[FR Doc. 2026–22074 Filed 10–28–26; 8:45 am]
BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[374446]

Sunshine Act Meeting; Open Commission Meeting Thursday, October 29, 2026

October 22, 2026.
The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 29, 2026 which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.
While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: www.fcc.gov/visit. Open Meetings are streamed live at: www.fcc.gov/live and on the FCC’s YouTube channel.

Item no.	Bureau	Subject
1	Wireless TeleCommunications	<p>Title: Auctioning the 1675–1695 MHz and 2020–2025 MHz Bands (WT Docket No. 26–284); Unleashing Licensed Spectrum for Direct-to-Device (GN Docket No. 26–281); Allocation and Service Rules for the 1675–1680 MHz Band (WT Docket No. 19–116).</p> <p>Summary: The Commission will consider a Further Notice of Proposed Rulemaking (FNPRM) that would unlock 25 megahertz of prime mid-band spectrum for advanced commercial communications services, including terrestrial, direct-to-device (D2D), or a hybrid of both. The rules proposed in this item, if adopted, would enable the auctioning, licensing, and rapid development of the 1675–1695 MHz and 2020–2025 MHz bands. In particular, the FNPRM would propose and seek comment on policies, service and technical rules, and coordination requirements for the 1675–1695 MHz and 2020–2025 MHz bands.</p>

Item no.	Bureau	Subject
2	Wireless Telecommunications	<p><i>Title:</i> Unleashing Licensed Spectrum for Direct-to-Device (GN Docket No. 26–281); Single Network Future: Supplemental Coverage from Space (GN Docket No. 23–65).</p> <p><i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking that would modernize the Commission's rules for Direct-to-Device (D2D) services in licensed spectrum. The rules proposed in this item, if adopted, would make an additional 482 megahertz of spectrum available for Supplemental Coverage from Space (SCS), eliminate burdensome SCS requirements, and consider measures to modernize and harmonize the SCS and the Mobile Satellite Service (MSS) rules.</p>
3	Wireless Telecommunications	<p><i>Title:</i> Unleashing American Drone Dominance (GN Docket No. 26–74); Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems (WT Docket No. 22–323); Facilitating Opportunities for Advanced Air Mobility (WT Docket No. 24–629).</p> <p><i>Summary:</i> The Commission will consider a Report and Order (R&O) that would eliminate an outdated restriction that prevents drone operations in the 800 MHz Cellular band. The R&O would unlock 50 megahertz of licensed, nationwide, low-band spectrum for drone use and promote parity with other similar flexible-use bands.</p>
4	Office of Engineering and Technology	<p><i>Title:</i> Prohibiting Test Labs and Certification Bodies in Non-Reciprocal Countries (ET Docket No. 24–136).</p> <p><i>Summary:</i> The Commission will consider a Third Report and Order and Third Further Notice of Proposed Rulemaking (FNPRM) aimed to strengthen the integrity, security, and resiliency of the FCC's equipment authorization program by prohibiting the recognition of Test Labs, Telecommunications Certification Bodies, and laboratory accreditation bodies located in non-Reciprocal Economies, which are territories lacking a Mutual Recognition Agreement or other comparable reciprocal trade agreement with the United States. It would also require all substantive FCC testing, certification, and accreditation activities on which equipment authorization depends, to occur in the U.S. or Reciprocal Economies. The item would adopt a uniform transition period ending December 1, 2028, that would enable Test Labs to expand capacity and manufacturers in the U.S. and Reciprocal Economies two years to find alternative Test Labs and expand capacity. The accompanying FNPRM would seek comment on a range of additional equipment authorization integrity measures.</p>
5	Office of International Affairs	<p><i>Title:</i> Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks (IB Docket No. 23–119); Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules (MD Docket No. 23–134).</p> <p><i>Summary:</i> The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would modernize the Commission's international section 214 framework to strengthen protections for U.S. telecommunications services and infrastructure, while reducing unnecessary regulatory burdens.</p>
6	Wireline Competition	<p><i>Title:</i> Connect America Fund: A National Broadband Plan for our Future High-Cost Universal Support (WC Docket No. 10–90); Reforming the High-Cost Program for an All-IP Future (WC Docket No. 26–96); Safeguarding Universal Service Funding Through Effective Applicant Vetting (WC Docket No. 26–288).</p> <p><i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking that, if adopted, would seek comment on proposals for implementing the Rural Broadband Protection Act (RBPA). The RBPA, enacted on May 11, 2026, directs the Commission to initiate a rulemaking proceeding within 180 days to establish a vetting process for applicants for, and other recipients of, a new covered funding award, which the Notice interprets as an award of high-cost support based on an application for funding to support the deployment of a broadband-capable network and the provision of supported services over the network.</p>
7	Consumer and Governmental Affairs	<p><i>Title:</i> Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213); Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123); Consumer and Governmental Affairs, Media, and Wireless Telecommunications Bureaus Seek Update on Commission's Fulfillment of the Twenty-First Century Communications and Video Accessibility Act (GN Docket No. 21–140).</p> <p><i>Summary:</i> The Commission will consider a Notice of Proposed Rulemaking to modernize its accessibility rules to keep pace with the rapidly changing communications landscape, promote innovation, better match consumer expectations, and remove barriers to accessibility.</p>
8	Enforcement	<p><i>Title:</i> Enforcement Bureau Action.</p> <p><i>Summary:</i> The Commission will consider an enforcement action.</p>

* * * * *

The meeting will be webcast at: www.fcc.gov/live. Open captioning will be provided as well as a text only version on the FCC website. Other

reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you

if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: fcc504@fcc.gov or call the Consumer

& Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairman may hold a news conference in which he will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): MediaRelations@fcc.gov. Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at www.fcc.gov/live.

Authority: This meeting is held, in accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–22080 Filed 10–27–26; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1250; FR ID 374765]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before November 30, 2026.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–1250.

Title: Section 74.851(k), 600 MHz Service Band Wireless Microphones and Video Assist Devices Labeling.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents and Responses: 6 respondents; 150 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: Third party disclosure requirement (labeling requirement).

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303(f), 303(g), and 303(r).

Total Annual Burden: 38 hours.

Total Annual Cost: \$225.

Needs and Uses: The Commission will submit this information collection as a revision to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the full three-year clearance from them. The FCC updates the title from “Section 15.37(k), and 74.851(k)(l), Consumer Disclosure and Labeling” to read as follows: Section 74.851(k), 600 MHz Service Band Wireless Microphones and Video Assist Devices Labeling. Additionally, the removal of §§ 15.37(k) and 74.851(l) are no longer associated or active with the Code of Federal Regulations due to E.O. 14192 (titled “*Unleashing Prosperity Through Deregulation*”) and E.O. 14219 (titled “*Ensuring Lawful Governance and Implementing the President’s Department of Government Efficiency Deregulatory Initiative*”).

The labeling requirement is applicable to persons who manufacture, sell, lease, or offer for sale or lease,

wireless microphone or video assist devices *to the extent that these devices are capable of operating on the specific frequencies associated with the 600 MHz service band (617–652 MHz/663–698 MHz)*. The Commission recognized that a requirement for consumer disclosure at the point of sale or lease that was previously part of this information collection no longer affects any party since wireless microphone users must have ceased any wireless microphone operations in the 600 MHz service band.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–22081 Filed 10–28–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1225; FR ID 374590]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 28, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1225.

Title: National Deaf-Blind Equipment Distribution Program.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions; state, local, or tribal governments.

Number of Respondents and Responses: 2,222 respondents; 6,067 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, every five-years, monthly, one-time, quarterly, and semi-annual reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefit. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), and 719 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), and 620.

Total Annual Burden: 19,421 hours.

Total Annual Cost: \$3,000.

Needs and Uses: Section 105 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) added section 719 to the Communications Act of 1934, as amended (the Act). Public Law 111–260, 124 Stat. 2751 (2010); Public Law 111–265, 124 Stat. 2795 (2010) (making technical corrections); 47 U.S.C. 620. Section 719 of the Act requires the Commission to establish rules that define as eligible for up to \$10,000,000 of support annually from the Interstate Telecommunications Relay Service Fund (TRS Fund) those programs that are approved by the Commission for the distribution of specialized customer premises equipment designed to make telecommunications service, internet

access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deafblind. 47 U.S.C. 620(a), (c). Accordingly, on August 5, 2016, the Commission released a Report and Order, document FCC 16–101, published at 81 FR 65948, September 26, 2016, adopting rules to establish the NDBEDP, also known as “iCanConnect,” as a permanent program. See 47 CFR 64.6201 through 64.6219.

In document FCC 16–101, the Commission adopted rules requiring the following:

(a) Entities must apply to the Commission for certification to receive reimbursement from the TRS Fund for NDBEDP activities. The FCC's Consumer and Governmental Affairs Bureau certified 56 programs—one for each state, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands—for a period of five years. Incumbent programs must apply to renew their certifications, if desired, and potential new entrants must also apply for certification.

(b) A program wishing to relinquish its certification before its certification expires must provide written notice of its intent to do so.

(c) Certified programs must disclose to the Commission actual or potential conflicts of interest.

(d) Certified programs must notify the Commission of any substantive change that bears directly on its ability to meet the qualifications necessary for certification.

(e) A certified entity may present written arguments and any relevant documentation as to why suspension or revocation of certification is not warranted.

(f) When a new entity is certified as a state's program, the previously certified entity must take certain actions to complete the transition to the new entity.

(g) Certified programs must require an applicant to provide verification that the applicant is deafblind.

(h) Certified programs must require an applicant to provide verification that the applicant meets the income eligibility requirement.

(i) Certified programs must re-verify the income and disability eligibility of an equipment recipient under certain circumstances.

(j) Certified programs must permit the transfer of an equipment recipient's account when the recipient relocates to another state.

(k) Certified programs must include an attestation on consumer application forms.

(l) Certified programs must conduct annual audits and submit to Commission-directed audits.

(m) Certified programs must document compliance with NDBEDP requirements, provide such documentation to the Commission upon request, and retain such records for at least five years.

(n) Certified programs must submit reimbursement claims as instructed by the TRS Fund Administrator, and supplemental information and documentation as requested. In addition, the entity selected to conduct national outreach will submit claims for reimbursement on a quarterly basis.

(o) Certified programs must submit reports every six months as instructed by the NDBEDP Administrator. In addition, the entity selected to conduct national outreach will submit an annual report.

(p) Informal and formal complaints may be filed against NDBEDP certified programs, and the Commission may conduct such inquiries and hold such proceedings as it may deem necessary.

(q) Certified programs must include the NDBEDP whistleblower protections in appropriate publications. In March 2026, the Commission adopted the *Suspension and Debarment Report and Order*, FCC 26–18, published at 91 FR 18134, April 9, 2026, which applies the government-wide non-procurement suspension and debarment framework to the NDBEDP. These rules amend 47 CFR 64.6207 and 64.6215 to require NDBEDP certified programs to submit the disclosures required under 2 CFR 180.335 when applying for certification or recertification, to update such disclosures annually, and to provide updated disclosures upon any substantive change affecting their qualifications. Certified programs must also obtain and maintain disclosures from lower-tier participants—such as contractors, subcontractors, consultants, and suppliers—that play a material role in NDBEDP transactions. These new requirements introduce additional reporting and recordkeeping obligations that are accounted for in the burden estimates in this Supporting Statement.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–22092 Filed 10–28–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 13, 2026.

A. Federal Reserve Bank of Chicago (Christopher Koopmans, Senior Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414.

Comments can also be sent electronically to Comments.applications@chi.frb.org:

1. *Jacob Edward Schubert, and Devon Mensching Schubert, as custodian for a minor child, all of Itasca, Illinois*, to join the Mensching Family Control Group, a group acting in concert, to acquire voting shares of Itasca Bancorp Inc. and thereby indirectly acquire voting shares of Itasca Bank and Trust Co., both of Itasca, Illinois.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice

President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to KCApplicationComments@kc.frb.org:

1. *Richard D. Burns, Lyndon, Kansas, and Janet C. Walsh, Osage City, Kansas*; to acquire voting shares of CMJR Investments, Inc. (CMJR), and thereby indirectly acquire voting shares of The Lyndon State Bank (LSB), both of Lyndon, Kansas. In addition, *Patrick G. Walsh, Osage City, Kansas, and Carmen M. Burns, Lyndon, Kansas*; to join the Burns Family Control Group (BFCG), a group acting in concert, to retain voting shares of CMJR, and thereby indirectly retain voting shares of LSB. Richard D. Burns and Janet C. Walsh have been previously permitted by the Federal Reserve System to be members of the BFCG.

C. Federal Reserve Bank of Dallas (Lindsey Wieck, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. *Klinka Lollar Austin, Jacksonville, Texas*; to join the Austin/Chapman Family Control Group, a group acting in concert, to retain voting shares of Capital Bancorp, Inc., Jacinto City, Texas, and thereby indirectly retain voting shares of Capital Bank, Houston, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–22070 Filed 10–28–26; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–381]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To

comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment.

Information Collections

1. *Type of Information Collection*
Request: Revision of a currently approved collection; *Title of Information Collection:* Medicare Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP) Providers Certification Requirements; *Use:* This is a request for revision of Form CMS-381, which is approved for collection under OMB Control Number (0938-0273). CMS has provided greater clarity in the "Instructions for Completing Form CMS-381" and updated CMS website information. The changes included submitting the form during recertification through an attestation process in lieu of an on-site survey by state survey agencies. After the 60-day **Federal Register** notice, which was published May 18, 2026 (91 FR 28596), CMS determined that we would not pursue attestation through recertification. Instead, we will continue recertification through an onsite survey, and CMS removed the attestation instructions. Additionally, a small change in burden resulted from an omission in the calculation.

Form CMS-381 was developed to ensure that each OPT/OSP extension location at which OPT/OSP providers furnish services must be reported by the providers to the State Survey Agencies (SAs). CMS currently requires the CMS-381 form for initial certification, during recertification surveys, and when the OPT/OSP requests changes to its locations. CMS issued guidance consistent with this change via policy memorandum QSO-24-18-OPT.

The OPT/OSP providers may render services on their already approved premises and the premises of other institutions (e.g., skilled nursing facilities) or on a premise owned/leased/rented by the OPT/OSP. If the OPT/OSP bills the Medicare program for these services and renders these services in an area within the institution set aside for rehabilitation care, these premises are considered extension locations of the OPT/OSP. However, a patient's home is not considered an extension location.

Extension locations are considered part of the OPT/OSP provider's primary location and are subject to the same approval policy as is applicable to the OPT/OSP primary site. In addition to meeting applicable sections of the conditions of participation for all outpatient physical therapy/speech pathology providers, these extension

locations fall under the OPT/OSP provider agreement and are identified under the OPT/OSP provider number.

Form CMS-381 is completed when:

(1) new OPT/OSP providers enter the Medicare program (initial certification); (2) when existing OPT/OSP providers delete or add a service, or close or add an extension location; or, (3) when existing OPT/OSP providers are recertified by the State Survey Agency (SA) through survey. Note, for deemed OPT/OSP providers under a CMS-approved Accrediting Organization (AO), the CMS-381 will continue to voluntarily be part of the reaccreditation surveys at least every 36 months. Form CMS-381 is used by the SA, AO, and by the CMS Survey Operations Group to identify extension locations where services are furnished by providers of outpatient physical therapy and speech-language pathology services. These locations must be known to surveyors to ensure the appropriate monitoring of providers' compliance with the Federal requirements. *Form Number:* CMS-381 (OMB control number: 0938-0273); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 501; *Total Annual Responses:* 501; *Total Annual Hours:* 251. (For policy questions regarding this collection contact Megan Hayden at 410-786-6029.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-22106 Filed 10-28-26; 8:45 am]

BILLING CODE 4169-69-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), The Department of Health and Human Services (HHS).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), is providing notice of a computer matching program between CMS and participating State-Based Administering Entities (AEs), titled "Determining Eligibility for Enrollment in Applicable

State Health Subsidy Programs Under the Patient Protection and Affordable Care Act''. The matching program supports eligibility determinations for enrollment in applicable State health subsidy programs under the Patient Protection and Affordable Care Act (PPACA), including Qualified Health Plans (QHPs), Medicaid, the Children's Health Insurance Program (CHIP), and Basic Health Programs (BHPs). The matching program also supports implementation of statutory requirements concerning Medicaid community engagement and the prevention of concurrent Medicaid enrollment in more than one State through the Multi-State Enrollment Prevention (MSEP) system.

DATES: The deadline for comments on this notice is November 30, 2026. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately October 2025 to March 2027) and, within three months of expiration, may be renewed for up to one additional year if the parties make no changes to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit written comments on this notice, by mail or email, to the CMS Privacy Officer, Division of Security, Privacy Policy & Oversight, Information Security & Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services, Location: N1-14-56, 7500 Security Blvd., Baltimore, MD 21244-1850, to barbara.dempulos@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact Terence Kane, Director, Division of Automated Verifications and SEP Policy, Marketplace Eligibility and Enrollment Group, Center for Consumer Information & Insurance Oversight, Centers for Medicare & Medicaid Services, CMS, at (410) 218-6687 or by email: Terence.Kane@cms.hhs.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a) provides certain protections for individuals applying for and receiving federal benefits under federal benefit programs. The law governs the use of computer matching by federal agencies when records in a system of records (meaning, federal

agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the Office of Management and Budget (OMB), in advance and annually, as required by 5 U.S.C. 552a(o)(2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program satisfies these requirements. It re-establishes the matching that has been in place since 2013 and was most recently re-established in 2025, as described in 90 FR 51764.

Barbara Dempulos,

CMS Privacy Act Officer, Division of Security, Privacy Policy and Governance, Office of Information Technology, Centers for Medicare & Medicaid Services.

Participating Agencies

The agencies participating in the matching program are the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and State-Based Administering Entities (AEs). Currently, each of the 50 states, the District of Columbia, and Puerto Rico has one or more AE(s) participating in this matching program. Other U.S. territories may eventually participate.

AEs administer insurance affordability programs and include Medicaid/Children's Health Insurance Program (CHIP) agencies, state-based exchanges (SBEs), and basic health programs (BHPs). In states that operate a SBE, the AE would include the Medicaid/CHIP agency. Additionally,

there are two states—Minnesota and New York—where the AE operates as both a SBE and BHP. In states that have elected to utilize the federally-facilitated exchange (FFE), the AE would include only the Medicaid/CHIP agency.

Authority for Conducting the Matching Program

The principal authority for conducting the matching program is 42 U.S.C. 18001, et seq.

Purpose(s)

The matching program will enable CMS to provide information (including information CMS receives from other federal agencies under related matching agreements) to AEs, to assist AEs in verifying applicant information as required by the Patient Protection and Affordable Care Act of 2010 (PPACA) to determine applicants' eligibility for enrollment in applicable state health subsidy programs, including exemption from the requirement to maintain minimum essential coverage (MEC) or from the individual responsibility payment. In addition, to avoid dual enrollment, information will be shared between CMS and AEs, and among AEs, for the purpose of verifying whether applicants and enrollees are currently eligible for or enrolled in a Medicaid/CHIP program. All information will be shared through a data services hub (Hub) established by CMS to support the federally-facilitated health insurance exchange (which CMS operates) and state-based exchanges.

Categories of Individuals

The individuals whose information will be used in the matching program are (1) applicants, meaning individuals who apply for eligibility to enroll in applicable state health subsidy programs through an Exchange established under the PPACA or through a state Medicaid, CHIP, or BHP agency; (2) enrollees, meaning individuals currently enrolled in those programs whose eligibility is being redetermined, renewed, or periodically verified, including verification of Medicaid community engagement and of concurrent Medicaid enrollment in more than one state; and (3) non-applicant members of the applicant's household who are listed on the application by name and date of birth or SSN and whose information bears on the applicant's eligibility, such as the tax filer, the tax filer's spouse, tax dependents, and other household members whose income is counted in determining household income.

Categories of Records

The categories of records that will be used in the matching program are identifying records; minimum essential coverage period records; return information (household income and family size information); citizenship status records; birth and death information; disability coverage and income information; postsecondary educational enrollment records and imprisonment status records.

The data elements CMS will receive from AEs may include: Social Security Number (if applicable), Last Name, First Name, and Date of Birth, and, from state Medicaid and CHIP agencies, Medicaid and CHIP eligibility and enrollment information (such as program type, eligibility dates, state, and state beneficiary identifier).

The data elements the AEs will receive from CMS may include: Validation of SSN; Verification of citizenship or immigration status; Incarceration status; Eligibility and/or enrollment in certain types of MEC; Income, based on Federal Tax Information (FTI), Veteran's disability rating data; educational enrollment data; Social Security Title II benefits (retirement, survivors, and disability insurance) and current income sources; Quarters of Coverage; and Death Indicator.

System(s) of Records

The records used in this matching program will be disclosed from the following systems of records, consistent with the routine uses identified in the applicable System of Records Notices (SORNs):

CMS Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, last published in full at 78 FR 63211 (October 23, 2013), as amended at 83 FR 6591 (February 14, 2018).

[FR Doc. 2026–22015 Filed 10–28–26; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0421]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice of request for public comments.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services (HHS), the Assistant Secretary for Planning and Evaluation (ASPE) is inviting public comment on an extension request for an approved information collection request: ASPE Umbrella Generic Clearance for the Collection of Qualitative Research and Assessment (OMB #0990–0421). No changes are proposed to the purpose and use described within this generic, but burden estimates have been adjusted to reflect estimated use over the next three years.

DATES: Comments on the ICR must be received on or before December 28, 2026.

ADDRESSES: Submit your comments to Danielle.Berman@hhs.gov.

FOR FURTHER INFORMATION CONTACT:

When submitting comments or requesting information, please include the document identifier 0990–0421 and project title for reference, to Danielle Berman, email: Danielle.Berman@hhs.gov.

SUPPLEMENTARY INFORMATION:

Title of the Collection: ASPE Umbrella Generic Clearance for the Collection of Qualitative Research and Assessment.

Type of Collection: Extension of an Umbrella Generic Clearance.

OMB No. 0990–0421.

Abstract

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting an extension without changes for their umbrella generic clearance for purposes of conducting qualitative research. ASPE advises the Secretary of the Department of Health and Human Services on policy development in health, disability, human services, data, and science, and provides advice and analysis on economic policy. ASPE leads special initiatives, coordinates the Department's evaluation, research, and demonstration activities, and manages cross-Department planning activities such as strategic planning, legislative planning, and review of regulations. Integral to this role, ASPE conducts qualitative research to gain a better understanding of emerging health policy issues, develop future intramural and

extramural research projects, and to ensure HHS leadership and agencies have relevant data for evidence-based program and policy decision-making. These efforts often require quick planning and implementation to ensure timely data collection and information around emergent areas of interest. ASPE is requesting approval for at least four types of qualitative research: (a) interviews, (b) focus groups, (c) questionnaires, and (d) other qualitative methods. Data collection will take place through a variety of activities—both in-person and virtual—dependent on the specific project. ASPE will submit individual requests under this clearance, as they are planned.

The goal of developing these activities is to gather timely information and first-hand perspectives on priority policy-relevant topics and identify emerging issues and research gaps to ensure the successful implementation of HHS programs. Qualitative data and information collected from activities carried out under this generic clearance will inform internal analyses, surface areas for further research, and provide opportunities for engagement and collaboration with key stakeholders. Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

ASPE is requesting comments on the burden for qualitative research aimed at understanding emerging health and human services policy issues.

Respondents: Participants may include health and human services experts; national, state, and local health or human services representatives; public health, human services, or healthcare providers; representatives of other health or human services organizations, and people with lived experience.

Annual Burden Estimates: The anticipated annualized burden is expected to increase slightly from what is currently approved to account for additional research efforts to be responsive to emerging leadership priorities and interest in broad-based input.

ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Information collection	Number of respondents	Number of responses per respondents	Average burden hours per response	Total burden hours
Health or Human Services Policy Stakeholders.	Qualitative Research Methods	7,000	1	1	7,000

Comments: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Catherine Howard,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2026-22096 Filed 10-28-26; 8:45 am]

BILLING CODE 4151-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be videocast and can be accessed from the NIH Videocast website at the following links: <http://videocast.nih.gov/> or <https://www.nibib.nih.gov/about-nibib/advisory-council>.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: May 18, 2027.

Open: 9:00 a.m. to 12:55 p.m.

Agenda: Report from the Institute Director, Council Members and other Institute staff.

Address: National Institutes of Health, Rockledge II, Conference Room 160, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Closed: 12:55 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Address: National Institutes of Health, Rockledge II, Conference Room 160, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: David Rampulla, Ph.D., Deputy Director, National Institute of Biomedical Imaging and Bioengineering, 9000 Rockville Pike, Bldg. 31, Room 1C14, Bethesda MD 20892-5477, 301.451.4774, david.rampulla@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm>, where an agenda and any additional information for the meeting will be posted when available.

Dated: October 26, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22105 Filed 10-28-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: February 19, 2027.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC Chief Executive Officer (CEO) Update of Recent Activities and Organizational Priorities, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

Address: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Jonathan M. Green, MD, MBA Chief Executive Officer, Clinical Center, NIH 10 Center Drive, Bethesda, MD 20892, 314-503-8019, jonathan.green3@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license,

or passport) and to state the purpose of their visit.

Information is also available on the CCRHB website: <https://www.ccrhb.od.nih.gov/> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 27, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22120 Filed 10-28-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

Individuals who plan to attend in-person or view the virtual meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can be accessed from the Fogarty International Center website (<https://www.fic.nih.gov/About/Advisory/Pages/default.aspx>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: June 7, 2027.

Open: 9:00 a.m. to 12:30 p.m.

Agenda: Update and discussion of current and planned Fogarty International Center activities.

Address: Fogarty International Center, 31 Center Drive, Room B2C02, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Closed: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate the second level of grant applications.

Address: Fogarty International Center, 31 Center Drive, Room B2C02, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Meeting Access: <https://www.fic.nih.gov/About/Advisory/Pages/default.aspx>.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, 31 Center Drive, Room B2C02, Bethesda, MD 20892, 301-495-1415, kristen.weymouth@nih.gov.

Registration is not required to attend the open portion of this meeting.

Information is also available on the Institute's/Center's home page: <http://www.fic.nih.gov/About/Advisory/Pages/default.aspx>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: October 27, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22114 Filed 10-28-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended because the premature disclosure of grant applications and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 3-4, 2027.

Open: May 03, 2027, 10:00 a.m. to 4:00 p.m.

Agenda: NICHD Director's Report, NCMRR Director's report; Report from NABMRR Liaison to the NICHD Advisory Council, Community Champions for Disability Health Challenge, Discussion on Health Services Research in Rehabilitation, and Scientific Talk on Communication and Speech Disorders.

Address: Eunice Kennedy Shriver National Institute of Child, Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20817.

Meeting Format: In Person and Virtual Meeting.

Closed: May 04, 2027, 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate medical Rehabilitation Resource Centers, Discussion of Artificial Intelligence in Rehabilitation, Scientific talk on Bioengineering Support for Stroke and Limb Loss, and Planning for Next NABMRR Meeting.

Address: Eunice Kennedy Shriver National Institute of Child, Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20817.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Ralph M. Nitkin, Ph.D., National Center for Medical Rehabilitation, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Bethesda, MD 20892-7510, (301) 402-4206, nitkin@mail.nih.gov.

Registration is not required to attend this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Persons listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to

the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.nichd.nih.gov/about/advisory/nabmrr>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 26, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22112 Filed 10-28-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 11–12, 2027.

Closed: May 11, 2027, 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person.

Closed: May 12, 2027, 8:00 a.m. to 9:00 a.m.

Agenda: NIA IRP Review.

Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person.

Open: May 12, 2027, 9:00 a.m. to 12:30 p.m.

Agenda: Call to Order and Director's Status Report; Council Business; Meeting Adjourned.

Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person.

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Room 8C11, Rockville, MD 20852, (301) 496-9322, ksantora@nih.gov.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nia.nih.gov/about/naca, where an agenda and any additional information for the meeting will be posted when available.

Dated: October 26, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22109 Filed 10-28-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: June 25, 2027.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC Acting Chief Executive Officer (CEO) Update of Recent Activities and Organizational Priorities, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

Address: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Jonathan M. Green, MD, MBA Chief Executive Officer, Clinical Center, NIH 10 Center Drive, Bethesda, MD 20892, 314-503-8019, jonathan.green3@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the CCRHB website: <https://www.ccrhb.od.nih.gov/> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research

Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 27, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–22118 Filed 10–28–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 14–15, 2027.

Closed: September 14, 2027, 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Open: September 15, 2027, 9:00 a.m. to 1:00 p.m.

Agenda: Director Status Report; Staff Introductions, Council Business.

Address: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Room 8C11, Rockville, MD 20852, (301) 496–9322, ksantora@nih.gov.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nia.nih.gov/about/naca, where an agenda and any additional information for the meeting will be posted when available.

Dated: October 26, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–22108 Filed 10–28–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: October 15, 2027.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC Chief Executive Officer (CEO) Update of Recent Activities and Organizational Priorities, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

Address: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Jonathan M. Green, MD, MBA Chief Executive Officer, Clinical Center, NIH 10 Center Drive, Bethesda, MD 20892, 314–503–8019, jonathan.green3@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the CCRHB website: <https://www.ccrhb.od.nih.gov/> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 27, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–22119 Filed 10–28–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

Individuals who plan to attend in-person or view the virtual meeting and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can be accessed from the Fogarty International Center website (<https://www.fic.nih.gov/About/Advisory/Pages/default.aspx>).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 9–10, 2027.

Closed: September 09, 2027, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate the second level of grant applications.

Address: Fogarty International Center, National Institutes of Health, Lawton Chiles International House (Stone House), 16 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Open: September 10, 2027, 9:00 a.m. to 12:30 p.m.

Agenda: Update and discussion of current and planned Fogarty International Center activities.

Address: Fogarty International Center, National Institutes of Health, Lawton Chiles International House (Stone House), 16 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Meeting Access: <https://www.fic.nih.gov/About/Advisory/Pages/default>.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, 31 Center Drive, Room B2C02, Bethesda, MD 20892, 301-495-1415, kristen.weymouth@nih.gov.

Registration is not required to attend the open portion of this meeting. In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.fic.nih.gov/About/Advisory/Pages/default.aspx>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International

Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: October 26, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22110 Filed 10-28-26; 8:45 am]

BILLING CODE 4167-05-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors *Eunice Kennedy Shriver* National Institute of Child Health and Human Development.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the *Eunice Kennedy Shriver* National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors *Eunice Kennedy Shriver* National Institute of Child Health and Human Development.

Date: June 4, 2027.

Open: 10:00 a.m. to 12:00 p.m.

Agenda: Director's Report, Scientific Director's Report on the status of the NICHD Division of Intramural Research and current organizational structure and update on the Office of Education.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human

Development, National Institutes of Health 31 Center Drive, Room 2A03N, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Closed: 12:00 p.m. to 2:45 p.m.

Agenda: Confidential Discussions; Review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes Room 2A03N, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Chris J. McBain, Ph.D., Scientific Director *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, 31 Center Drive, Room 2A03N, Bethesda, MD 20892, (301) 594-5984, mcbainc@mail.nih.gov.

Information is also available on the Institute's/Center's home page: <https://www.nichd.nih.gov/about/advisory/bsc>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 26, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-22111 Filed 10-28-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: September 7–8, 2027.

Open: September 07, 2027, 9:00 a.m. to 1:45 p.m.

Agenda: Introductory Remarks; NICHD Director's Report; Concept Clearance; Invited Director: Clinical Center; Annual Division of Intramural Research; Scientific Presentation; Voice of the Participant; Remarks from Retiring Members.

Address: National Institutes of Health, 31 Center Drive, Bethesda, MD 20892.

Meeting Format: In Person.

Closed: September 08, 2027, 2:00 p.m. to 5:00 p.m.

Agenda: Review of Applications, Closing Remarks; Adjournment.

Address: National Institutes of Health, 31 Center, Drive Bethesda, MD 20892.

Meeting Format: In Person.

Contact Person: Joseph Gindhart, Ph.D., Deputy Director, Division of Extramural Activities, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2322, 301–435–6975, joe.gindhart@nih.gov.

Registration is not required to attend the open portion of this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.nichd.nih.gov/about/advisory/council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 27, 2026.

Margaret N. Vardanian,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–22115 Filed 10–28–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be videocast and can be accessed from the NIH Videocast website at the following links: <https://videocast.nih.gov/> or <https://www.nibib.nih.gov/about-nibib/advisory-council>.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 14, 2027.

Open: 9:00 a.m. to 12:25 p.m.

Agenda: Call to order; Director's report; ORA Director's Updates; Speaker; Adjournment.

Address: National Institutes of Health, Rockledge II, Conference Room 260 C/D/E/F, 6710 B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person.

Closed: 1:25 p.m. to 3:15 p.m.

Agenda: To review and evaluate conflict of Interest; Review of Applications, Adjournment.

Address: National Institutes of Health, Rockledge II, Conference Room 260 C/D/E/F, 6710 B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person.

Contact Person: David Rampulla, Ph.D., Deputy Director, National Institute of Biomedical Imaging And Bioengineering, 9000 Rockville Pike, Bldg. 31, Room 1C14, Bethesda MD 20892–5477, 301.451.4774, david.rampulla@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm>, where an agenda and any additional information for the meeting will be posted when available.

Dated: October 27, 2026.

Margaret N. Vardanian,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–22113 Filed 10–28–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HOMELAND SECURITY

Notice Regarding the Uyghur Forced Labor Prevention Act Entity List

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The U.S. Department of Homeland Security (DHS), as the Chair of the Forced Labor Enforcement Task Force (FLETF), announces the publication and availability of the updated Uyghur Forced Labor Prevention Act (UFLPA) Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA, on the DHS UFLPA website. The updated UFLPA Entity List is also published as an appendix to this notice. This update adds three new entities to the UFLPA Entity List, two of which appear on two separate sub-lists.

DATES: This notice announces the publication and availability of the UFLPA Entity List updated as of October 29, 2026, included as an appendix to this notice.

ADDRESSES: Persons seeking additional information on the UFLPA Entity List should email the FLETF at FLETF.UFLPA.EntityList@hq.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Samuel Greene, Acting Director, Entity

List Office, Trade and Economic Security, Office of Strategy, Policy, and Plans, DHS. Phone: (202) 891–2331, email: FLETF.UFLPA.EntityList@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security, on behalf of the Forced Labor Enforcement Task Force (FLETF), is announcing the publication of the updated UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to section 2(d)(2)(B) of the Uyghur Forced Labor Prevention Act (Pub. L. 117–78) (UFLPA), to <https://www.dhs.gov/uflpa-entity-list>. The UFLPA Entity List is available as an appendix to this notice. This update adds three entities to the section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region (Xinjiang or XUAR) to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang. Two of the three entities are also being added to section 2(d)(2)(B)(v) list of the UFLPA, which identifies facilities and entities that source material from Xinjiang or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government labor scheme that uses forced labor. Future revisions to the UFLPA Entity List, which may include additions, removals, or technical corrections, will be published to <https://www.dhs.gov/uflpa-entity-list> and in the appendices of future **Federal Register** notices. See appendix 1.

Beginning on June 21, 2022, the UFLPA requires the Commissioner of U.S. Customs and Border Protection to apply a rebuttable presumption that goods mined, produced, or manufactured by entities on the UFLPA Entity List are made with forced labor, and therefore, prohibited from importation into the United States under 19 U.S.C. 1307. See section 3(a) of the UFLPA. As the FLETF revises the UFLPA Entity List, including by making additions, removals, or technical corrections, DHS, on its behalf, will post such revisions to the DHS UFLPA website (<https://www.dhs.gov/uflpa-entity-list>) and also publish the revised UFLPA Entity List as an appendix to a **Federal Register** notice.

Background

A. The Forced Labor Enforcement Task Force

Section 741 of the United States-Mexico-Canada Agreement Implementation Act established the FLETF to monitor United States enforcement of the prohibition under section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307). See 19 U.S.C. 4681. Pursuant to DHS Delegation Order No. 23034, the DHS Under Secretary for Strategy, Policy, and Plans serves as Chair of the FLETF, an interagency task force that includes the Department of Homeland Security, the Office of the U.S. Trade Representative, and the Departments of Labor, State, Justice, the Treasury, and Commerce as member agencies.¹ See 19 U.S.C. 4681; Executive Order 13923 (May 15, 2020). In addition, the FLETF includes five observer agencies: the Departments of Energy and Agriculture, the National Security Council, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement Homeland Security Investigations.

B. The Uyghur Forced Labor Prevention Act: Preventing Goods Made With Forced Labor in the People’s Republic of China From Being Imported Into the United States

The UFLPA requires, among other things, that the FLETF, in consultation with the Secretary of Commerce and the Director of National Intelligence, develop a strategy (UFLPA section 2(c)) for supporting enforcement of section 307 of the Tariff Act of 1930, to prevent the importation into the United States of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People’s Republic of China. As required by the UFLPA, the *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China*, which was published on the DHS website on June 17, 2022 (see <https://www.dhs.gov/uflpa-strategy>), includes the initial UFLPA Entity List, a consolidated register of the four lists required to be developed and maintained pursuant to the UFLPA. See UFLPA section 2(d)(2)(B).

¹ The U.S. Department of Homeland Security, as the FLETF Chair, has the authority to invite representatives from other executive departments and agencies, as appropriate. See Executive Order 13923 (May 15, 2020). The U.S. Department of Commerce is a member of the FLETF as invited by the Chair.

C. UFLPA Entity List

The UFLPA Entity List addresses distinct requirements set forth in clauses (i), (ii), (iv), and (v) of section 2(d)(2)(B) of the UFLPA that the FLETF identify and publish the following four lists:

- (1) a list of entities in the Xinjiang Uyghur Autonomous Region that mine, produce, or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor;
- (2) a list of entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region;
- (3) a list of entities that exported products made by entities in lists 1 and 2 from the People’s Republic of China into the United States; and
- (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program or the “pairing-assistance” program or any other government-labor scheme that uses forced labor.

The UFLPA Entity List is a consolidated register of the above four lists. In accordance with section 3(e) of the UFLPA, effective June 21, 2022, entities on the UFLPA Entity List (listed entities) are subject to the UFLPA’s rebuttable presumption that products they produce, wholly or in part, are made with forced labor and prohibited from entry into the United States under 19 U.S.C. 1307. The UFLPA Entity List is provided as appendix 1 to this notice. The UFLPA Entity List should not be interpreted as an exhaustive list of entities engaged in the practices described in clauses (i), (ii), (iv), or (v) of section 2(d)(2)(B) of the UFLPA.

Revisions to the UFLPA Entity List, including all additions, removals, and technical corrections, will be published on the DHS UFLPA website (<https://www.dhs.gov/uflpa-entity-list>) and as an appendix to a notice that will be published in the **Federal Register**. See appendix 1. The FLETF will consider future additions to, or removals from, the UFLPA Entity List based on criteria described in clauses (i), (ii), (iv), or (v) of Section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation(s) to add, remove or make technical corrections to an entry

on the UFLPA Entity List. FLETF member agencies will review and vote on revisions to the UFLPA Entity List accordingly.

Additions to the Entity List

The FLETF will consider future additions to the UFLPA Entity List based on the criteria described in clauses (i), (ii), (iv), or (v) of section 2(d)(2)(B) of the UFLPA. Any FLETF member agency may submit a recommendation to the FLETF Chair to add an entity to the UFLPA Entity List. Following review of the recommendation by the FLETF member agencies, the decision to add an entity to the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Requests for Removal From the Entity List

Any listed entity may submit a request for removal (removal request) from the UFLPA Entity List along with supporting information to the FLETF Chair at FLETF.UFLPA.EntityList@hq.dhs.gov. In the removal request, the entity (or its designated representative) should provide information that demonstrates that the entity no longer meets or does not meet the criteria described in the applicable clause ((i), (ii), (iv), or (v)) of section 2(d)(2)(B) of the UFLPA. The FLETF Chair will refer all such removal requests and supporting information to FLETF member agencies. Upon receipt of the removal request, the FLETF Chair or the Chair's designated representative may contact the entity on behalf of the FLETF with questions on the removal request and may request additional information. Following review of the removal request by the FLETF member agencies, the decision to remove an entity from the UFLPA Entity List will be made by majority vote of the FLETF member agencies.

Listed entities may request a meeting with the FLETF after submitting a removal request in writing to the FLETF Chair at FLETF.UFLPA.EntityList@hq.dhs.gov. Following its review of a removal request, the FLETF may accept the meeting request at the conclusion of the review period and, if accepted, will hold the meeting prior to voting on the entity's removal request. The FLETF Chair will advise the entity in writing of the FLETF's decision on its removal request. While the FLETF's decision on a removal request is not appealable, the FLETF will consider new removal

requests if accompanied by new information.

Robert T. Law,

Under Secretary, Office of Strategy, Policy, & Plans, U.S. Department of Homeland Security.

Appendix 1

This notice supersedes the UFLPA Entity List published in the **Federal Register** on August 3, 2026 (91 FR 48913). The UFLPA Entity List as of October 29, 2026 is available in this appendix and is published on <https://www.dhs.gov/uflpa-entity-list>. This update adds three entities to section 2(d)(2)(B)(ii) list of the UFLPA, which identifies entities working with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the Xinjiang Uyghur Autonomous Region:

- BGI Genomics Co., Ltd. (also known as BGI Genomics)
- MGI Tech Co., Ltd. (also known as MGI)
- Shenzhen BGI Technology Co., Ltd. (also known as BGI Group; and BGI Holdings)

BGI Genomics Co., Ltd. (also known as BGI Genomics) is located in Shenzhen, Guangdong Province, China. Shenzhen BGI Technology Co., Ltd., also included on the UFLPA Entity List, is the company's controlling shareholder. BGI Genomics' main business includes providing research services, comprehensive solutions for precision medicine testing, and health management services through gene testing, mass spectrometry, bioinformatics analysis, and multimodal intelligent analysis models. The United States Government has reasonable cause to believe, based on specific and articulable information, that BGI Genomics conducts genetic testing in the XUAR alongside the government of the XUAR and as a part of its government initiatives. Such genetic testing is utilized to facilitate the recruitment, transport, transfer, harboring or receiving of forced labor or Uyghurs Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang. The FLETF therefore determined the activities of BGI Genomics satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

MGI Tech Co., Ltd. (also known as MGI) is located in Shenzhen, Guangdong Province, China. MGI is under the control of the same ultimate controlling shareholder as Shenzhen

BGI Technology Co., Ltd., also included on the UFLPA Entity List. MGI's business activities focus on the research and development, manufacturing, and sales of instruments, reagents, and related products in the field of life science and biotechnology. The United States Government has reasonable cause to believe, based on specific and articulable information, that MGI has provisioned genetic testing capacity to the XUAR government to conduct genetic testing in the XUAR including as a part of its government initiatives. Such genetic testing is utilized to facilitate the recruitment, transport, transfer, harboring or receiving of forced labor or Uyghurs Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang. The FLETF therefore determined the activities of MGI satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

Shenzhen BGI Technology Co., Ltd. (also known as BGI Group; and BGI Holdings) is a company located in Shenzhen, Guangdong Province, China. BGI Group is a genomics and biotechnology company that develops and applies genetic sequencing technologies for research, healthcare, and commercial use. It provides DNA, RNA, and metabolomics sequencing technology and can provide services, as well as equipment, technical support, and precision medicine and health solutions. The company also built and manages the China National GeneBank, a national-level biological data and sample repository. The United States Government has reasonable cause to believe, based on specific and articulable information, that BGI Group conduct genetic testing in the XUAR alongside the XUAR government and as a part of its government initiatives. Such genetic testing is utilized to facilitate the recruitment, transport, transfer, harboring or receiving of forced labor or Uyghurs Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang. The FLETF therefore determined the activities of BGI Group satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(ii).

This update also adds two entities to section 2(d)(2)(B)(v) list of the UFLPA, which identifies facilities and entities that source material from Xinjiang or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing-assistance" program or any other government labor scheme that uses forced labor:

- BGI Genomics Co., Ltd. (also known as BGI Genomics)
- Shenzhen BGI Technology Co., Ltd. (also known as BGI Group; and BGI Genomics)

BGI Genomics Co., Ltd. (also known as BGI Genomics) is located in Shenzhen, Guangdong Province, China. Shenzhen BGI Technology Co., Ltd., also included on the UFLPA Entity List, is the company's controlling shareholder. BGI Genomics' main business includes providing research services, comprehensive solutions for precision medicine testing, and health management services through gene testing, mass spectrometry, bioinformatics analysis, and multimodal intelligent analysis models. The United States Government has reasonable cause to believe, based on specific and articulable information, that BGI Genomics conducts genetic testing, including on genetic material of plants, animals, and bacterial diseases sourced from the XUAR. The FLETF therefore determined the activities of BGI Genomics satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

Shenzhen BGI Technology Co., Ltd. (also known as BGI Group; and BGI Holdings) is a company located in Shenzhen, Guangdong Province, China. BGI Group is a genomics and biotechnology company that develops and applies genetic sequencing technologies for research, healthcare, and commercial use. It provides DNA, RNA, and metabolomics sequencing technology and can provide services, as well as equipment, technical support, and precision medicine and health solutions. The company also built and manages the China National GeneBank, a national-level biological data and sample repository. The United States Government has reasonable cause to believe, based on specific and articulable information, that BGI Group conduct genetic testing, including on genetic material of human beings sourced from the XUAR, as well as planning on testing genetic materials of plants and animals. The FLETF therefore determined the activities of BGI Group satisfy the criterion for addition to the UFLPA Entity List described in section 2(d)(2)(B)(v).

The UFLPA Entity List is a consolidated register of the four lists that are required to be developed and maintained pursuant to section 2(d)(2)(B) of the UFLPA. With this update, there are 190 entities that meet the criteria set forth in the four required lists (see sections 2(d)(2)(B)(i), (ii), (iv),

and (v) of the UFLPA) are specified on the UFLPA Entity List.

UFLPA Entity List October 29, 2026

UFLPA Section 2 (d)(2)(B)(i)—A List of Entities in Xinjiang That Mine, Produce, or Manufacture Wholly or in Part Any Goods, Wares, Articles, and Merchandise With Forced Labor

Baoding LYSZD Trade And Business Co., Ltd.
 Hetian Haolin Hair Accessories Co. Ltd. (and two aliases: Hotan Haolin Hair Accessories; and Hollin Hair Accessories)
 Hetian Taida Apparel Co., Ltd (and one alias: Hetian TEDA Garment)
 Hoshine Silicon Industry (Shanshan) Co., Ltd (including one alias: Hesheng Silicon Industry (Shanshan) Co.) and subsidiaries
 Xinjiang Daqo New Energy, Co. Ltd (including three aliases: Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
 Xinjiang East Hope Nonferrous Metals Co., Ltd.
 Xinjiang Goens Energy Technology Co., Ltd. (formerly known as Xinjiang GCL New Energy Material Technology Co., Ltd.; and Xinjiang GCL New Energy Materials Technology Co., Ltd.)
 Xinjiang Junggar Cotton and Linen Co., Ltd.
 Xinjiang Production and Construction Corps (including three aliases: XPCC; Xinjiang Corps; and Bingtuan) and its subordinate and affiliated entities

UFLPA Section 2(d)(2)(B)(ii)—A List of Entities Working With the Government of Xinjiang To Recruit, Transport, Transfer, Harbor or Receive Forced Labor or Uyghurs, Kazakhs, Kyrgyz, or Members of Other Persecuted Groups Out of Xinjiang

Aksu Huaifu Color Spinning Co., Ltd. (also known as Aksu Huaifu Textiles Co., Ltd.; Akesu Huaifu; Aksu Huaifu Dyed Melange Yarn; and Akesu Huaifu Melange Yarn Co., Ltd.)
 Anhui Xinya New Materials Co., Ltd. (formerly known as Chaohu Youngor Color Spinning Technology Co., Ltd.; and Chaohu Xinya Color Spinning Technology Co., Ltd.)
 Baowu Group Xinjiang Bayi Iron and Steel Co., Ltd. (also known as Xinjiang Bayi Iron and Steel Co. Ltd.; Baosteel Group Xinjiang Bayi Iron and Steel Co., Ltd.; and Bayi Iron and Steel)
 BGI Genomics Co., Ltd. (also known as BGI Genomics)
 Camel Group Co., Ltd.
 Changhong Meiling Co., Ltd. (formerly known as Hefei Meiling Co., Ltd.; and

Hefei Meiling Group Holdings Limited)
 COFCO Sugar Holdings Co., Ltd.
 Dongguan Oasis Shoes Co., Ltd. (also known as Dongguan Oasis Shoe Industry Co. Ltd.; Dongguan Luzhou Shoes Co., Ltd.; and Dongguan Lvzhou Shoes Co., Ltd.)
 Geehy Semiconductor Co., Ltd.
 Hefei Bitland Information Technology Co., Ltd. (including three aliases: Anhui Hefei Baolongda Information Technology; Hefei Baolongda Information Technology Co., Ltd.; and Hefei Bitland Optoelectronic Technology Co., Ltd.)
 Kashgar Construction Engineering (Group) Co., Ltd.
 KTK Group (including three aliases: Jiangsu Jinchuang Group; Jiangsu Jinchuang Holding Group; and KTK Holding)
 Kuitun Yadasi Textile Co., Ltd. (also known as Kuitun Yadaxi Textile Co., Ltd.; and formerly known as Xinjiang Tianmian Foundation Textile Co., Ltd.; and Xinjiang Tianhong Jiye Textile Co., Ltd.)
 Lop County Hair Product Industrial Park
 Lop County Meixin Hair Products Co., Ltd.
 MGI Tech Co., Ltd. (also known as MGI)
 Nanjing Synergy Textiles Co., Ltd. (including two aliases: Nanjing Xinyi Cotton Textile Printing and Dyeing; and Nanjing Xinyi Cotton Textile)
 Ninestar Corporation
 No. 4 Vocation Skills Education Training Center (VSETC)
 Shandong Meijia Group Co., Ltd. (also known as Rizhao Meijia Group)
 Shenzhen BGI Technology Co., Ltd. (also known as BGI Group; and BGI Holdings)
 Sichuan Jingweida Technology Group Co., Ltd. (also known as Sichuan Mianyang Jingweida Technology Co., Ltd. and JWD Technology; and formerly known as Mianyang High-tech Zone Jingweida Technology Co., Ltd.)
 Tanyuan Technology Co. Ltd. (including five aliases: Carbon Yuan Technology; Changzhou Carbon Yuan Technology Development; Carbon Element Technology; Jiangsu Carbon Element Technology; and Tanyuan Technology Development)
 Western Gold Co., Ltd.
 Western Gold Hami Gold Mine Co., Ltd.
 Western Gold Karamay Hatu Gold Mine Co., Ltd.
 Xinjiang Communications Construction Group Co., Ltd.
 Xinjiang Energy (Group) Co., Ltd.
 Xinjiang Energy (Group) Real Estate Co., Ltd.
 Xinjiang Habahe Ashele Copper Co., Ltd. (also known as Ashele Copper)

Xinjiang Jinbao Mining Co., Ltd.
 Xinjiang Nonferrous Metals Industry Group Co., Ltd.
 Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.)
 Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
 Xinjiang Shenhua Coal and Electricity Co., Ltd.
 Xinjiang Tengxiang Magnesium Products Co., Ltd.
 Xinjiang Tianshan Wool Textile Co., Ltd.
 Xinjiang Tianyun Organic Agriculture Co., Ltd.
 Xinjiang Zhonghe Co., Ltd. (also known as Xinjiang Joinworld Co., Ltd.)
 Xinjiang Zhongtai Chemical Co., Ltd.
 Xinjiang Zhongtai Group Co., Ltd.
 Xinjiang Zijin Zinc Industry Co., Ltd.
 Zhengzhou Synear Food Co., Ltd.
 Zhuhai Apex Microelectronics Co., Ltd.
 Zhuhai G&G Digital Technology Co., Ltd.
 Zhuhai Ninestar Information Technology Co., Ltd.
 Zhuhai Ninestar Management Co., Ltd.
 Zhuhai Pantum Electronics Co., Ltd.
 Zhuhai Pu-Tech Industrial Co., Ltd.
 Zhuhai Seine Printing Technology Co., Ltd.

UFLPA Section 2(d)(2)(B)(iv)—A List of Entities That Exported Products Described in Clause (iii) From the People's Republic of China Into the United States

Entities identified in sections (i) and (ii) above may serve as both manufacturers and exporters. The FLETF has not identified additional exporters at this time but will continue to investigate and gather information about additional entities that meet the specified criteria.

UFLPA Section 2(d)(2)(B)(v)—A List of Facilities and Entities, Including the Xinjiang Production and Construction Corps, That Source Material From Xinjiang or From Persons Working With the Government of Xinjiang or the Xinjiang Production and Construction Corps for Purposes of the "Poverty Alleviation" Program or the "Pairing-Assistance" Program or Any Other Government Labor Scheme That Uses Forced Labor

Aksu Biaoxin Fiber Co., Ltd. (formerly known as Aksu Shangheng Fiber Co., Ltd.)
 Aksu Aodu Sugar Industry Co., Ltd.
 Aksu Huafu Color Spinning Co., Ltd. (also known as Aksu Huafu Textiles Co., Ltd.; Akesu Huafu; Aksu Huafu Dyed Melange Yarn; and Akesu Huafu Melange Yarn Co., Ltd.)

Alar Nanjiang Carbon New Material Co., Ltd.
 Anhui Yaozhiyuan Biotechnology Development Co., Ltd. (also known as Anhui Yaozhiyuan Chinese Herbal Medicine Co., Ltd.; Anhui Yaozhiyuan Chinese Medicinal Materials Co., Ltd.; and Anhui Yaozhiyuan Biological Technology Development Co., Ltd.)
 Annan Canned Food Co., Ltd. (also known as Nanling County Annan Canned Food Co., Ltd.)
 Awati Huafu Textile Co., Ltd.
 Baiyin Nonferrous Group Co., Ltd. (also known as Baiyin Nonferrous; and BNMC; and formerly known as Baiyin Nonferrous Metals Company)
 Baoding LYSZD Trade and Business Co., Ltd.
 Baoji Jucheng Titanium Industry Co., Ltd.
 Baotou Meike Silicon Energy Co., Ltd.
 BGI Genomics Co., Ltd. (also known as BGI Genomics)
 Binzhou Chinatex Yintai Industrial Co., Ltd.
 Century Sunshine Group Holdings, Ltd.
 Chacha Food Company, Limited (also known as Chacha Food Co., Ltd.; Qia Qia Food; and Chia Chia Food Co., Ltd.)
 Chalkis Health Industry Co., Ltd. (formerly known as Xinjiang Chalkis Co., Ltd.)
 Changji Esquel Textile Co., Ltd. (also known as Changji Yida Textile Co., Ltd.)
 Changzhou Guanghui Food Ingredients Co., Ltd. (also known as GSweet; Changzhou Guanghui Food Additive Co., Ltd.; and Changzhou Guanghui Food Technology Co., Ltd.; and formerly known as Changzhou Guanghui Biotechnology Co., Ltd.)
 Chenguang Biotech Group Co., Ltd.
 Chenguang Biotechnology Group Yanqi Co., Ltd.
 China Cotton Group Henan Logistics Park Co., Ltd., Xinye Branch
 China Cotton Group Nangong Hongtai Cotton Co., Ltd.
 China Cotton Group Shandong Logistics Park Co., Ltd.
 China Cotton Group Xinjiang Cotton Co.
 Dalian Sunspeed Foods Co., Ltd. (also known as Dalian Shengchi International Trade Co., Ltd.)
 Donghai JA Solar Technology Co., Ltd.
 Esquel Group (also known as Esquel China Holdings Limited).
 Fujian Minlong Warehousing Co., Ltd.
 Fujian Septwolves Industry Co., Ltd. (also known as Septwolves).
 Gansu Yasheng International Trading Co., Ltd. (also known as Gansu Yasheng International Trade Co., Ltd.; and Yasheng International Trade; and formerly known as Gansu Yasheng International Trade Group Co., Ltd.)

Guangdong Esquel Textile Co., Ltd.
 Guangxi Kelun Pharmaceutical Co., Ltd.
 Hangzhou Union Biotechnology Co., Ltd. (also known as Hangzhou Youer Biotechnology Co., Ltd.; Youer Biotech; and Union Biotech)
 Hebei Suguo International Trade Co., Ltd. (also known as Suguo International)
 Hebei Tomato Industry Co., Ltd. (also known as Hebei Temeite Industrial Group Co., Ltd.; and formerly known as Hebei Temeite International Trade Co., Ltd.)
 Hefei Bitland Information Technology Co., Ltd.
 Henan Guorong Electronic Technology Co., Ltd. (also known as Goroe; and Guorong Shares)
 Henan Tongzhou Cotton Industry Co., Ltd.
 Henan Yumian Group Industrial Co., Ltd.
 Henan Yumian Logistics Co., Ltd. (formerly known as 841 Cotton Transfer Warehouse)
 Hengshui Cotton and Linen Corporation Reserve Library
 Hetian Haolin Hair Accessories Co. Ltd.
 Hetian Taida Apparel Co., Ltd.
 Heze Cotton and Linen Co., Ltd.
 Heze Cotton and Linen Economic and Trade Development Corporation (also known as Heze Cotton and Linen Trading Development General Company)
 Hongyuan Green Energy Co., Ltd. (also known as HY Solar; and Hoyuan Green Energy Co. Ltd. and formerly known as Wuxi Shangji CNC Co., Ltd.; Wuxi Shangji Automation Co., Ltd.; and Wuxi Shangji Grinding Machine Co., Ltd.)
 Hongyuan New Materials (Baotou) Co., Ltd.
 Hoshine Silicon Industry (Shanshan) Co., Ltd., and Subsidiaries
 Huafu Fashion Co., Ltd.
 Huangmei Xiaochi Yinfeng Cotton (formerly known as Hubei Provincial Cotton Corporation's Xiaochi Transfer Reserve)
 Hubei Jingtian Cotton Industry Group Co., Ltd.
 Hubei Qirun Investment Development Co., Ltd.
 Hubei Yinfeng Cotton Co., Ltd.
 Hubei Yinfeng Warehousing and Logistics Co., Ltd.
 Hunan Aihua Group Co., Ltd. (also known as Aihua Group; and AiSHi).
 Hunan Nanmo Biotechnology Co., Ltd. (also known as Hunan Nanmomo Technology Co., Ltd.)
 Huyanghe Huafu Hongsheng Cotton Industry Co., Ltd.
 Inner Mongolia Qileyan Food Co., Ltd.
 Inner Mongolia Xuanda Food Co., Ltd. (also known as Xuanda Food; and

- formerly known as Wuyuan County Xuanda Cereals, Oils and Foods Co., Ltd.)
- Jiangsu Meike Solar Technology Co., Ltd. (also known as Meike Co. and formerly known as Jiangsu Gaozhao New Energy Development Co., Ltd.)
- Jiangsu Tiangong Technology Co., Ltd.
- Jiangsu Yinhai Nongjiale Storage Co., Ltd.
- Jiangsu Yinlong Warehousing and Logistics Co., Ltd.
- Jiangyin Lianyun Co. Ltd. (also known as Jiangyin Intermodal Transport Co. and Jiangyin United Transport Co.)
- Jiangyin Xiefeng Cotton and Linen Co., Ltd.
- Jiangyin Xinren Aluminum Foil Technology Co., Ltd. (also known as Xinren Aluminum Foil)
- Jiangyin Xinren Aluminum Technology Co., Ltd. (also known as Xinren Aluminum)
- Jinan Haihong International Trade Co., Ltd. (formerly known as Jinan Haifang Trading Co., Ltd.)
- Jining Pengjie Trading Co., Ltd.
- Junan Jinsheng Import & Export Co., Ltd. (also known as Junan County Jinsheng Import and Export Co., Ltd.)
- Juye Cotton and Linen Station of the Heze Cotton and Linen Corporation.
- Kashgar Aodu Sugar Industry Co., Ltd.
- Kashgar Jiangguoguo Agricultural Technology Co., Ltd. (also known as Jiangguoguo)
- Kingherbs Limited (also known as Changsha Jincao Biotechnology Co., Ltd.)
- Kuche Zongheng Cotton Industry Co., Ltd.
- Kuitun Jinfu Textile Co., Ltd.
- Lanxi Huachu Logistics Co., Ltd.
- Linxi County Fangpei Cotton Buying and Selling Co., Ltd.
- Lop County Hair Product Industrial Park
- Lop County Meixin Hair Products Co., Ltd.
- Nanjing Lilai Pharmaceutical Technology Co., Ltd.
- Nanyang Hongmian Logistics Co., Ltd. (also known as Nanyang Red Cotton Logistics Co., Ltd.)
- Ningbo Huafu Donghao Industrial Co., Ltd.
- Ninghai Huafu Textile Co., Ltd.
- No. 4 Vocation Skills Education Training Center (VSETC)
- Qingdao Vital Nutraceutical Ingredients BioScience Co., Ltd. (also known as Qingdao Weiyikang Biotechnology Co., Ltd.)
- Rare Earth Magnesium Technology Group Holdings, Ltd.
- SDIC Xinjiang Lithium Industry Co., Ltd.
- SDIC Xinjiang Luobupo Potash Co., Ltd. (also known as SDIC Xinjiang Lop Nur Potash Co., Ltd.)
- Shandong Gold Mining Co., Ltd. (also known as Shandong Gold)
- Shandong Gold Smelting Co., Ltd.
- Shandong Weiqiao Pioneering Group Co., Ltd. (also known as Shandong Weiqiao Chuangye Group Co., Ltd.; Shandong Weiqiao Venture Co., Ltd.)
- Shandong Weiqiao Textile Technology Co., Ltd.
- Shanghai JUMP Machinery & Technology Co., Ltd. (also known as Shanghai Jiapai Machinery Technology Co., Ltd.; and formerly known as Shanghai Chituma Food Machinery Technology Co., Ltd.)
- Shaya Yinhua Cotton Industry Co., Ltd.
- Shenzhen BGI Technology Co., Ltd. (also known as BGI Group; and BGI Holdings)
- Shihezi Huafu Hongfeng Cotton Industry Co., Ltd.
- Shihezi Huafu Hongsheng Cotton Industry Co., Ltd.
- Shihezi Standard Fiber Co., Ltd.
- Shihezi Xinren Battery Aluminum Foil Technology Co., Ltd.
- Shuangliang Silicon Materials (Baotou) Co., Ltd.
- Sichuan Yuan'an Pharmaceutical Co., Ltd. (also known as Sichuan Yuanan Pharmaceutical Co., Ltd.)
- Taiyuan Weishan International Economic Business Co., Ltd. (also known as Taiyuan Weishan International Trade Co., Ltd.)
- TBEA Co., Ltd.
- Tefeng Pharmaceutical Co., Ltd. (also known as Tefeng Pharmaceutical; and formerly known as Tefeng Health Technology Co., Ltd.)
- Tianshan Aluminum Group Co., Ltd. (formerly known as Shimge Pump Industry Group Co., Ltd.)
- The TNN Development Limited (also known as Dehui (Dalian) International Trade Co., Ltd.)
- Tianjin Dunhe International Trade Co., Ltd. (also known as Dunhe Foods)
- Tianjin Kunyu International Co., Ltd. (also known as China Kunyu Industrial Co., Ltd.)
- Tianjin Tianwei Food Co., Ltd. (formerly known as Tianjin Sanhe Fruit and Vegetable Co., Ltd.)
- Turpan Esquel Textile Co., Ltd.
- Weifang Alice Food Co., Ltd.
- Wugang Zhongchang Logistics Co., Ltd.
- Xinjiang Baiyin Mining Development Co., Ltd.
- Xinjiang Biochemical Pharmaceutical Co., Ltd.
- Xinjiang Cotton Industry Group Jiashi Cotton Industry Co., Ltd.
- Xinjiang Cotton Industry Group Yuepu Lake Cotton Industry Co., Ltd.
- Xinjiang Daqo New Energy Co., Ltd. (also known as Xinjiang Great New Energy Co., Ltd.; Xinjiang Daxin Energy Co., Ltd.; and Xinjiang Daqin Energy Co., Ltd.)
- Xinjiang Habahe Ashele Copper Co., Ltd. (also known as Ashele Copper)
- Xinjiang Huafu Color Spinning Group Co., Ltd.
- Xinjiang Huafu Cotton Industry Group Co., Ltd.
- Xinjiang Huafu Hengfeng Cotton Industry Co., Ltd.
- Xinjiang Huafu Hongfeng Agricultural Development Co., Ltd.
- Xinjiang Huafu Textile Co., Ltd.
- Xinjiang Huashidan Pharmaceutical Co., Ltd.
- Xinjiang Jinchuan Mining Industry Co., Ltd. (also known as Xinjiang Jinchuan Company)
- Xinjiang Junggar Cotton and Linen Co., Ltd.
- Xinjiang Liufu Textile Industrial Park Co., Ltd.
- Xinjiang Nuziline Bio-Pharmaceutical Co., Ltd. (also known as Xinjiang Xinziyuan Biopharmaceutical Co., Ltd.)
- Xinjiang Production and Construction Corps (XPCC) and its subordinate and affiliated entities
- Xinjiang Production and Construction Corps Eighth Division Tianshan Aluminum Co., Ltd. (also known as Tian Aluminum Co., Ltd.)
- Xinjiang Shengfu Cotton Industry Co., Ltd.
- Xinjiang Tefeng Pharmaceutical Industry Co., Ltd.
- Xinjiang Tengxiang Magnesium Products Co., Ltd.
- Xinjiang Tianchi Energy Co., Ltd.
- Xinjiang Tianfu Cotton Supply Chain Co., Ltd.
- Xinjiang Tianhong Xinba Cotton Industry Co., Ltd. (also known as Xinjiang Tianhong New Eight Cotton Industry Co., Ltd.)
- Xinjiang Tianhongji Technology Co., Ltd. (formerly known as Xinjiang Tianhongji Silicon Industry Co., Ltd.)
- Xinjiang Tianshan Snow Lotus Pharmaceutical Co., Ltd.
- Xinjiang Tianshan Yingda Carbon Co., Ltd.
- Xinjiang Tianyun Organic Agriculture Co., Ltd.
- Xinjiang Tianzhan New Material Technology Co., Ltd.
- Xinjiang Yinlong Agricultural International Cooperation Co.
- Xinjiang Zefu Cotton Co., Ltd.
- Xinjiang Zijin Nonferrous Metals Co., Ltd.
- Xinjiang Zijin Zinc Industry Co., Ltd.
- Yili Chuanning Biotechnology Co., Ltd. (also known as Twinings Bio; and CN BIO)
- Yili Zhuowan Garment Manufacturing Co., Ltd.
- Zhangzhou Hang Fat Import & Export Co., Ltd. (also known as Zhangzhou Hengfa Import and Export Co., Ltd.)

Zhejiang Weixin Trading Co., Ltd.
Zijin Mining Group Co., Ltd.

[FR Doc. 2026–22094 Filed 10–28–26; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7107–N–25; OMB Control
No.: 2577–0294]

30-Day Notice of Proposed Information Collection: Moving To Work Amendment to Consolidated Annual Contributions Contract

AGENCY: Office of Policy Development
and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* November 30, 2026.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Anna Guido, PRA Compliance Officer, Paperwork Reduction Act Division (PRAD), Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email at PaperworkReductionActOffice@hud.gov, ATTN: Anna Guido, telephone (202) 402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Available documents submitted to OMB can be found in the docket file on reginfo.gov.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 15, 2026 at 91 FR 27970.

A. Overview of Information Collection

Title of Information Collection:
Moving to Work Amendment to
Consolidated Annual Contributions
Contract.

OMB Approval Number: 2577–0294.

Type of Request: Revision of currently
approved collection.

Form Number: HUD–50166.

Description of the need for the information and proposed use: The proposed Moving to Work (MTW) Amendment to the Annual Contributions Contract(s) (ACC), signed by HUD and the selected public housing agency (PHA), is necessary for HUD to implement the expansion of the MTW program enacted by Congress in the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015) (2016 Appropriation). It establishes the basic terms and conditions that will apply to new PHAs participating in the MTW demonstration and to existing MTW PHAs seeking to now be governed pursuant to the 2016 Appropriation. Specifically, the MTW ACC Amendment amends any ACCs for the public housing or housing choice voucher programs in effect between the PHA and HUD to establish the PHA’s designation as an MTW agency and to operate in accordance with the requirements of the MTW demonstration program, as amended by Public Law 114–113. The MTW ACC Amendment establishes the terms of participation in MTW, including the requirement that the PHA follow the MTW Operations Notice and its respective Selection Notice. The PHAs remain subject to the applicable ACCs to the extent that the provisions thereof are not otherwise waived by the Operations Notice or the applicable MTW Selection Notice. Additionally, the MTW ACC Amendment outlines PHA transition out of the demonstration and HUD termination rights upon PHA default. A copy of the proposed MTW ACC Amendment is published at the end of this notice.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
HUD–50166 MTW ACC Amendment ..	30	1	30	1	30	\$89.35	\$2,680.50

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

44 U.S.C. 3507.

Anna Guido,

Department PRA Compliance Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2026–22039 Filed 10–28–26; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–753, 754, and 756 (Fifth Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty order on cut-to-length carbon steel plate from China and the termination of the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 4, 2026.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202–708–1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On September 4, 2026, the Commission determined that the domestic interested party group response to its notice of institution (91 FR 32448, June 1, 2026) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews

pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on November 23, 2026. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission’s rules.

Written submissions.—As provided in § 207.62(d) of the Commission’s rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before 5:15 p.m. on November 30, 2026, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 30, 2026. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as

identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission’s rules.

By order of the Commission.

Issued: October 27, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–22077 Filed 10–28–26; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1776]

Bulk Manufacturer of Controlled Substances Application: Sigma Aldrich Research Biochemicals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sigma Aldrich Research Biochemicals, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before December 28, 2026. Such persons may also file a written request for a hearing on the application on or before December 28, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not

¹ A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements will be available from the Office of the Secretary and at the Commission’s website.

² The Commission has found the responses submitted on behalf of Cleveland-Cliffs Inc., Nucor Corporation, and SSAB Enterprises to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 26, 2026, Sigma Aldrich Research Biochemicals, Inc., 400–600 Summit Drive, Burlington, Massachusetts 01803, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cannabimimetic agents	7000	I

The company plans to bulk manufacture the listed controlled substances for biological and chemical research. No other activity for this drug code is authorized for this registration.

Justin Wood,

Deputy Assistant Administrator.

[FR Doc. 2026–22048 Filed 10–28–26; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Contribution Operations

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Contribution Operations." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by December 28, 2026.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Teray Kendall by telephone at 1–202–693–1000 ext.13894 (this is not a toll-free number), or by email at OUI-PRA@dol.gov. For persons with a hearing or

speech disability who need assistance using the telephone system, please dial 711 to access telecommunications relay services.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4524, Washington, DC 20210; by email: OUI-PRA@dol.gov.

FOR FURTHER INFORMATION CONTACT: Teray Kendall by telephone at 1–202–693–1000 ext. 13894 (this is not a toll-free number) or by email at OUI-PRA@dol.gov.

(Authority: 44 U.S.C. 3506(c)(2)(A).)

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

State Unemployment Insurance agencies submit data on the ETA 581 report to assess performance, accuracy and promptness in employer registrations, the timeliness of employer contribution and wage reports, collections (accounts receivable), and employer field audits. The report also tracks state efforts to detect employer tax avoidance schemes, commonly known as State Unemployment Tax Act (SUTA) Dumping. Section 303(k) of the Social Security Act requires states to detect SUTA Dumping. ETA uses this data to monitor and measure program performance and to support projections and forecasts as part of the budget process. Sections 303(a)(6) and (k) of the Social Security Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a

valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0178.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without Changes.

Title of Collection: Contribution Operations.

Form: ETA 581.

OMB Control Number: 1205–0178.

Affected Public: State governments.

Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 212.

Estimated Average Time per Response: 7.5 hours.

Estimated Total Annual Burden Hours: 1,590 hours.

Total Estimated Annual Other Cost Burden: \$0.

Marek Laco,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026–22018 Filed 10–28–26; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Records of Tests and of Examinations of Personnel Hoisting Equipment

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety & Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This information collection requires records of specific tests and inspections of mine personnel hoisting systems, including wire ropes, to ensure that the system remains safe to operate while in use. Review of the record indicates whether deficiencies are developing in the equipment, and in particular the wire rope, so that corrective action may be taken before an accident occurs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 1, 2026 (91 FR 32451).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will

have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Records of Tests and of Examinations of Personnel Hoisting Equipment.

OMB Control Number: 1219–0034.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 393.

Total Estimated Number of Responses: 105,563.

Total Estimated Annual Time Burden: 8,916 hours.

Total Estimated Annual Other Costs Burden: \$348,920.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–22016 Filed 10–28–26; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety & Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Identification of the miner representative, notification of mine owner and operator legal identity and notification of commencement of operations and closing of mines provide information to help ensure the health and safety of mine workers by identifying responsibility for mining operations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 1, 2026 (91 FR 32453).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who

are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Representative of Miners, Notification of Legal Identity, and Notification of Commencement of Operations and Closing of Mines.

OMB Control Number: 1219–0042.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 9,522.

Total Estimated Number of Responses: 9,522.

Total Estimated Annual Time Burden: 1,717 hours.

Total Estimated Annual Other Costs Burden: \$790.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,
Senior PRA Analyst.

[FR Doc. 2026–22020 Filed 10–28–26; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

[OMB Control No. 1290–ONEW]

New Collection; Older Workers Study Impact Evaluation

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Labor.

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

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on

proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the DOL Chief Evaluation Office (CEO) is soliciting comments on the information collection for Senior Community Service Employment Program Older Workers Study Impact Evaluation.

DATES: All comments must be received on or before December 28, 2026.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Email: ChiefEvaluationOffice@dol.gov; *Mail or Courier:* Marie-Ellen Ehounou, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Marie-Ellen Ehounou by email at ChiefEvaluationOffice@dol.gov or by phone at (202) 693–5506.

SUPPLEMENTARY INFORMATION:

I. Background

The Senior Community Service Employment Program (SCSEP), as authorized by Title V of the Older Americans Act (OAA) of 1965, has a dual purpose “to foster individual economic self-sufficiency and to increase the number of participants placed in unsubsidized employment in the public and private sectors, while maintaining the community service focus of the program.” Section 502 (e) of the OAA provides for the Secretary “to carry out demonstration projects, pilot projects, and evaluation projects, for the purpose of developing and implementing techniques and approaches, and demonstrating the effectiveness of the techniques and approaches, in addressing the employment and training needs of eligible individuals.” The Senior Community Service Employment

Program Demonstration Grants on Sector-Based Training for Low-Income Older Adult Workers funded nine SCSEP grantees to implement sector-based occupational training activities, including occupational skills training, on-the-job training, and career navigation.

The SCSEP impact study will test the effect of the sector-based occupational training services on unsubsidized employment and earnings. It is part of the larger Older Workers Study, which includes the following components:

- (1) A review of existing knowledge and data to inform evaluation activities,
- (2) An implementation evaluation design,
- (3) An implementation study of programs receiving the 2020 SCSEP grants,
- (4) An impact evaluation design that identifies an intervention for a pilot and rigorously evaluates the impact of the intervention on older workers’ employment outcomes (primarily placement outcomes), and
- (5) An evaluability assessment and potential future research options that would address important gaps in the evidence base related to employment services for older workers.

DOL’s CEO contracted with Urban Institute and its partner Capital Research Corporation to conduct the Older Workers Study.

This **Federal Register** Notice provides the opportunity to comment on proposed data collection instruments that will be used in the impact evaluation: (1) site visit discussion guides for grantee management and staff, local site administrators, career navigators, occupations skills training providers, and on-the-job training providers; a participant focus group guide; and (2) a participant follow-up survey.

II. Desired Focus of Comments

CEO is soliciting comments concerning the proposed information collection related to the Older Workers Study Impact Evaluation. CEO is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of DOL, including whether the information has practical utility;
- Evaluate the accuracy of DOL’s estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the information collection 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.

Documents related to this information collection request are available at <https://regulations.gov>. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns new data collection for the Older Workers Study Impact Evaluation.

Type of Review: New collection.

Agency: CEO.

OMB Number: 1290-0NEW.

Affected Public: Individuals (primary), Businesses or other for-profits, Not-for-profit institutions.

Total Number of Respondents: 2,145.

Total Number of Responses: 2,145.

Annual Burden Hours: 1,264 hours.

Annual Respondent or Recordkeeper Cost: \$0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Tiffany Boiman,

Chief Evaluation Officer, U.S. Department of Labor, Certifying Officer.

[FR Doc. 2026-22019 Filed 10-28-26; 8:45 am]

BILLING CODE 4510-JL-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2011-0028]

Grain Handling Facilities Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Grain Handling Facilities Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by December 28, 2026.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA-2011-0028) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Belinda Cannon, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-1950.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The

Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury while working in grain handling facilities.

Paragraph (d) of the Standard requires the employer to develop and implement a written emergency action plan so that employees will be aware of the appropriate actions to take in the event of an emergency.

Paragraph (e)(1) requires that employers provide training to employees at least annually, when changes in job assignment will expose them to new hazards, and employees assigned special tasks.

Paragraph (f)(1) requires the employer to issue a permit for all hot work except when the employer or the employer's representative (who would otherwise authorize the permit) is present while the hot work is being performed; in welding shops authorized by the employer; and in hot work areas authorized by the employer which are located outside of the grain handling structure. Under paragraph (f)(2) the hot work permit certifies that the requirements contained in 1910.272(a) have been implemented prior to beginning the hot work operations. Certificates must be kept on file until completion of the hot work operation.

Paragraph (g)(1)(i) requires the employer to issue a permit for entering bins, silos, or tanks unless the employer or the employer's representative is present during the entire operation. The intent of the permit is to certify that the precautions contained in paragraph (g) have been implemented prior to employees entering bins, silos, or tanks and must be kept on file until completion of the entry operations.

Paragraph (g)(1)(ii) requires that the employer de-energize, disconnect, lockout and tag, block off, or otherwise prevent operation of all mechanical, electrical, hydraulic, and pneumatic equipment that presents a danger to

employees inside grain storage structures.

Paragraph (g)(1)(iii) requires that the atmosphere of bins, silos, or tanks must be tested for the presence of combustible gases, vapors, toxic agents, and oxygen before and during the period employees are inside. Specifically, testing of gases, vapors, and toxic agents is required when the employer has reason to believe they may be present, and where the bin, silo, or tank has continuous natural air movement or continuous forced-air ventilation, testing for oxygen content is not required.

Paragraph (g)(3) required the presence of an observer, equipped to provide assistance, to be stationed outside a bin, silo, or tank being entered by an employee. The observer, in accordance with paragraph (e)(2) must receive additional training, which paragraph (g)(5) specifies training in rescue procedures, including notification methods for obtaining additional assistance.

Paragraphs (h)(1) through (h)(3) addresses safety requirement for entry into flat storage structures. Where equipment inside the storage structure presents a danger to the employee (e.g., an auger or other grain transport equipment), paragraph (h)(2)(i) requires that equipment to be disconnected, locked-out and tagged, blocked-off, or otherwise prevented from operating by other equally effective means or methods.

Paragraphs (i)(1) and (i)(2) require the employer to inform contractors performing work at the grain handling facility of known potential fire and explosion hazards related to the contractor's work, as well as applicable safety rules. Employers must also explain to the contractor the applicable provisions of the emergency action plan.

Paragraph (j)(1) requires the employer to develop and implement a written housekeeping program that establishes the frequency and method(s) determined to best reduce accumulations of fugitive grain dust on ledges, floors, equipment, and other exposed surfaces.

Paragraph (m)(1) requires the employer to implement preventative maintenance procedures consisting of regularly scheduled inspections of at least the mechanical and safety control equipment associated with dryers, grain stream processing equipment, dust collection equipment including filter collectors, and bucket elevators.

Paragraph (m)(3) requires a certification to be maintained for each inspection.

Paragraph (m)(4) requires the employer to implement procedures for

the use of tags and locks to prevent the inadvertent application of energy or motion to the equipment being repaired, serviced, or adjusted.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and.
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Grain Handling Facilities Standard. The agency is seeking an adjustment decrease in burden going from 57,837 to 45,177 hours, a difference of 12,660 hours. The decrease is due to the reduction in the number of grain elevators and mills in use from the agency's previous ICR.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Grain Handling Facilities Standard (29 CFR 1910.272).

OMB Control Number: 1218–0206.

Affected Public: Business or other for-profits.

Number of Respondents: 10,370.

Number of Responses: 874,544.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 45,177.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

- (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by

facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2011–0028). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877), 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 7–2025 (90 FR 27878).

Signed at Washington, DC, on October 5, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–22023 Filed 10–28–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Grant of Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand

the scope of recognition for Intertek Testing Services NA, Inc as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on October 29, 2026.

FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1000 ext. 18477; email:

meilinger.francis2@dol.gov.

General and technical information:

Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1000 ext. 11538 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Intertek Testing Services NA, Inc. (ITSNA), as a NRTL. ITSNA's expansion covers the addition of one test site to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These

notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

ITSNA submitted an application, dated February 14, 2024 (OSHA–2007–0039–0071), to expand recognition as a NRTL to include one additional test site located at: Intertek Testing Services (Singapore) Pte Ltd., No. 5 Pereira Road, #06–01 Asiawide Industrial Building, Singapore 368025. OSHA staff performed a review of ITSNA's testing facilities at ITSNA Singapore on February 20–21, 2025, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. ITSNA addressed these issues sufficiently, and OSHA staff preliminarily determined that OSHA should grant the application.

OSHA published the preliminary notice announcing ITSNA's expansion application in the **Federal Register** on February 27, 2026 (91 FR 9887). The agency requested comments by March 16, 2026.

OSHA received one comment (OSHA–2007–0039–0073) in response to the preliminary finding. The comment raised several concerns about the approval and requested that OSHA make public additional information related to OSHA's preliminary finding.

(1) National Security, Supply Chains, and Restraint of Trade

The commenter, which stated that it is an expert in cybersecurity, supply chain security, and defense industrial base policy, asserts that the expansion application for ITSNA to operate a new testing facility in Singapore raises national security, supply chain, and trade concerns and suggests several recommendations OSHA should take to address these concerns. The commenter's concerns are beyond the scope of OSHA's authority to address. OSHA established the NRTL Program, pursuant to its authority under the Occupational Safety and Health Act of 1970, to protect the safety and health of the Nation's workers (29 U.S.C. 651(b), 657(g)(2)). Consistent with this authority, NRTLs are recognized by OSHA solely to test and certify products to ensure they are safe for use in the workplace (29 CFR 1910.7). OSHA does not have the authority to regulate national security, supply chain, or trade issues.

Moreover, to the extent the commenter is implying that ITSNA

might try to use the Singapore site to require manufacturers or other clients to disclosure of sensitive information, OSHA is not aware of any such concerns and notes that no examples or specifics are provided by the commenter. Companies would be free to seek approval from different NRTLs.

Other governmental entities, such as those referred to by the commenter, may have authority to address the commenter's concerns through regulation or oversight of manufacturers or laboratories, inspection of products entering defense contractor or federal facility supply chains, or trade policy, for example.¹ OSHA also notes that ITSNA already operates at sites in seven other sites in China that have been previously approved by OSHA and OSHA is not aware of any significant issues resulting in the areas of concern to the commenter.

(2) Request for OSHA To Publish a Report of NRTL Nonconformances

In addition to raising national security, supply chain, and trade concerns, the commenter requests that OSHA “[p]ublish the full nonconformance report and corrective action documentation from the February 2025 Intertek Singapore site review before finalizing its recognition determination.” The purpose, the commenter asserts, would be to allow comment on the “nature or severity of the nonconformances found, whether any nonconformances involved testing methodology, equipment calibration, or documentation integrity, what specific corrective actions Intertek Singapore implemented, [and] how OSHA verified that corrective actions were effective rather than merely paper-compliant.” The commenter further elaborates that its goal is to review “the scope and methodology of the February 2025 review, the qualifications and independence of OSHA assessors conducting the foreign site review, whether OSHA engaged Singapore regulatory authorities in the review process, [and] the basis for the determination that nonconformances were ‘sufficiently addressed.’”

OSHA rejects this request. It is longstanding OSHA practice not to publish nonconformance reports or corrective action documentation in

¹ OSHA notes that the NRTL program regulation includes additional considerations related to the initial recognition of foreign-based testing organizations (29 CFR 1910.7, App. A.IA.1.b.). These considerations are not applicable to the instant matter because: (1) the application is not one for initial OSHA recognition; and (2) ITSNA is not a foreign-based testing agency or organization. Its headquarters is located in Arlington Heights, Illinois.

connection with the processing of NRTL applications. Publishing the documentation in connection with the processing of NRTL applications would likely hamper OSHA efforts to conduct oversight of the NRTL Program during assessments. That oversight is in large measure dependent on the free flow of information between OSHA and the NRTL and an understanding that the parties can speak candidly about nonconformances with the aim of resolving them. If the documentation were freely available, NRTLs could be more cautious about openly discussing and acknowledging even minor nonconformances because of potential negative impacts on their reputations and businesses. For example, a NRTL client might misconstrue the significance of a nonconformance and terminate its relationship with the NRTL.

(3) Request for Publication of the Scope of NRTL Recognition for the Singapore Site

The commenter also requests that OSHA “[p]ublish the complete proposed scope of recognition for the Singapore site—including all test standards—before the public comment period closes.” This request reflects a misunderstanding of how OSHA recognizes NRTLs. OSHA does not maintain lists of test standards for which *individual sites* are recognized. Instead, a NRTL’s scope of recognition is granted *to the NRTL as an entity*. As part of the recognition process, the NRTL must list the sites and test standards for which it seeks recognition, so ultimately OSHA’s recognition consists of a recognition *of the NRTL* to operate at one or more recognized sites using one or more recognized test standards. Collectively, the NRTL must have the capability to conduct evaluation and testing to each of the test standards in its scope at any combination of its recognized sites. A NRTL’s capability to conduct evaluation and testing at a particular recognized site may vary based on factors such as staffing at that site.

OSHA notes that ITSNA’s current scope of recognition includes 34 recognized sites and 608 test standards. ITSNA’s scope of recognition is available on OSHA’s website, see <https://www.osha.gov/nationally-recognized-testing-laboratory-program/its>.

(4) Request for OSHA To Establish a New Ongoing Monitoring Protocol for the Singapore Site

Finally, the commenter requests that OSHA “[e]stablish an ongoing

monitoring protocol for the Singapore site—including periodic unannounced reviews—as a condition of continued recognition.” This request is unnecessary because OSHA already has adequate applicable policies. The NRTL Program Directive contains policies and procedures for the conduct of Post-Recognition Assessments/Monitoring Visits at each recognized site “at least once every two years” (NRTL Program Directive, Ch. 2.XV.). The Directive also contains policies and procedures for the conduct of unscheduled assessments, including the authority for OSHA to conduct unscheduled assessments “when warranted, at the OTPCA Director’s discretion.” (*Id.*). The commenter provides no evidence to suggest that these policies are inadequate or that the Singapore facility warrants additional assessments.

For the reasons described above, OSHA will take no further action regarding the comment and is now proceeding with this notice to grant expansion to ITSNA’s scope of recognition.

To obtain or review copies of all public documents pertaining to the ITSNA expansion application, go to www.regulations.gov or contact the Docket Office (202) 693–2350 (TTY (877) 889–5627). Docket No. OSHA–2009–0025 contains all materials in the record containing ITSNA’s recognition.

II. Final Decision and Order

OSHA staff examined ITSNA’s expansion application, conducted a detailed on-site assessment, and examined other pertinent information. Based on review of this evidence, OSHA finds that ITSNA meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the specified limitations and conditions. OSHA, therefore, is proceeding with this final notice to grant ITSNA’s scope of recognition. OSHA limits the expansion of ITSNA’s recognition to include the site in Singapore as listed above. OSHA’s recognition of the site limits ITSNA to performing product testing and certifications only to the test standards for which the site has the proper capability and programs, and for test standards in ITSNA’s scope of recognition. This limitation is consistent with the recognition that OSHA grants to other NRTLs that operate multiple sites.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, ITSNA also must abide by the following conditions of the recognition:

1. ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. ITSNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. ITSNA must continue to meet the requirements for recognition, including all previously published conditions on ITSNA’s scope of recognition, in all areas for which it has recognition.

OSHA hereby expands the NRTL scope of recognition for ITSNA to include one additional test site in Singapore.

III. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 7–2025 (90 FR 27878, June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on September 30, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–22017 Filed 10–28–26; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2026–0001]

Obayashi—Jay Dee Joint Venture; Cemetery Brook Drain Tunnel Project; Grant of Permanent Variance

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

ACTION: Notice.

SUMMARY: In this notice, OSHA grants a permanent variance to Obayashi—Jay Dee Joint Venture (OJD) related to work in compressed air environments.

DATES: The permanent variance specified by this notice becomes effective on October 29, 2026 and shall remain in effect until the completion of the Cemetery Brook Drain Tunnel Project or until modified or revoked by OSHA.

FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of

Communications, U.S. Department of Labor; telephone: (202) 693–1000 ext. 18477; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1000 ext. 11538; email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

*Copies of this **Federal Register** notice.* Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at <http://www.osha.gov>.

I. Overview

On June 30, 2025, Obayashi—Jay Dee Joint Venture (OJD or the applicant), submitted under Section 6(d) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655, and 29 CFR 1905.11 (variances and other relief under Section 6(d)) an application for a permanent variance from several provisions of the OSHA standard that regulates work in compressed air, 1926.803 of 1926 Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air, and an interim order allowing it to proceed while OSHA considers the request for a permanent variance (OSHA–2026–0001–0002). This notice addresses OJD's application for a permanent variance and interim order for construction of the Cemetery Brook Drain Tunnel Project in Manchester, New Hampshire, only and is not applicable to future OJD tunneling projects.

Specifically, this notice addresses Obayashi—Jay Dee's application for a permanent variance and interim order from the provisions of the standard that: (1) require the use of the decompression values specified in decompression tables in Appendix A of subpart S (29 CFR 1926.803(f)(1)); and (2) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and (xvii), respectively).

OSHA reviewed Obayashi—Jay Dee's application for the variance and interim order and determined that they were appropriately submitted in compliance with the applicable variance procedures in Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and OSHA's regulations at 29 CFR 1905.11 (Variances and other relief under section 6(d)), including the

requirement that the applicant inform workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

OSHA also reviewed the alternative procedures in Obayashi—Jay Dee's application and preliminarily determined that the applicant's proposed alternatives, on the whole, subject to the conditions in the request and imposed by the interim order, provide measures that are as safe and healthful as those required by the cited OSHA standards. On May 29, 2026, OSHA published a **Federal Register** notice announcing Obayashi—Jay Dee's application for permanent variance, stating the preliminary determination along with the basis of that determination, and granting the interim order (91 FR 32095). OSHA requested comments on each.

OSHA did not receive any comments or other information disputing the preliminary determination that the alternatives were at least as safe as OSHA's standard, nor any objections to OSHA granting a permanent variance. Accordingly, through this notice OSHA grants a permanent variance, subject to the conditions set out in this document.

A. Background

The information that follows about Obayashi—Jay Dee, its methods, and the Cemetery Brook Drain Tunnel Project comes from the Obayashi—Jay Dee variance application.

Obayashi—Jay Dee is a contractor for the Cemetery Brook Drain Tunnel Project (the project), that works on complex tunnel projects using innovations in tunnel-excavation methods. The applicant's workers engage in the construction of tunnels using advanced shielded mechanical excavation techniques in conjunction with an earth pressure balanced micro-tunnel boring machine (TBM). Using shielded mechanical excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, TBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face through various geologies and isolate that pressure to the forward section (the working chamber) of the TBM.

Obayashi—Jay Dee asserts that it bores tunnels using a TBM at levels below the water table through soft soils consisting of clay, silt, and sand. TBMs are capable of maintaining pressure at the tunnel face, and stabilizing existing geological conditions, through the controlled use of a mechanically driven cutter head, bulkheads within the

shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. The forward-most portion of the TBM is the main chamber, and this chamber is the only pressurized segment of the TBM.

The main chamber (airlock) is a double compartment chamber (inner lock and outer lock). The inner lock is the primary work area and the outer lock is used for personnel transfer only. A door separates the inner and outer locks, allowing personnel to transfer from one pressure zone to another. This configuration allows workers to access the main chamber for compression and decompression, and medical personnel to access the main chamber if required in an emergency.

Obayashi—Jay Dee Hyperbaric Operations Manual (HOM) for the Cemetery Brook Drain Project indicates that the maximum pressure to which it is likely to expose workers during project interventions for the tunnel drives is 37 pounds per square inch gauge (p.s.i.g.). The applicant will pressurize the working chamber to the level required to maintain a stable tunnel face, which for this project Obayashi—Jay Dee estimates will be up to a pressure not exceeding 37 p.s.i.g., which does not exceed the maximum pressure specified by the OSHA standard at 29 CFR 1926.803(e)(5).¹ Obayashi—Jay Dee is not seeking a variance from this provision of the compressed-air standard.

Obayashi—Jay Dee employs specially trained personnel for the construction of the tunnel. To keep the machinery working effectively, Obayashi—Jay Dee asserts that these workers must periodically enter the excavation working chamber of the TBM to perform hyperbaric interventions during which workers would be exposed to air pressures up to 37 p.s.i.g., which does not exceed the maximum pressure specified by the existing OSHA standard at 29 CFR 1926.803(e)(5). These interventions consist of conducting inspections or maintenance work on the cutter-head structure and cutting tools of the TBM, such as changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head. These interventions are the only time that workers are exposed to compressed air. Interventions in the excavation working chamber (the pressurized

¹ The decompression tables in Appendix A of subpart S express the working pressures as pounds per square inch gauge (p.s.i.g.). Therefore, throughout this notice, OSHA expresses the p.s.i. value specified by 29 CFR 1926.803(e)(5) as p.s.i.g., consistent with the terminology in Appendix A, Table 1 of subpart S.

portion of the TBM) take place only after halting tunnel excavation and preparing the machine and crew for an intervention.

During interventions, workers access the working chamber by first passing through the outer lock. They then pass through a door to enter the inner lock, which includes the primary decompression area. The working chamber is designed to accommodate three people, which is the maximum crew size allowed under the permanent variance. When the crew is engaged in decompression activities, there is no other work performed on the working face.

Obayashi—Jay Dee asserts that these innovations in tunnel excavation have greatly reduced worker exposure to hazards of pressurized air work because they have eliminated the need to pressurize the entire tunnel for the project and thereby reduce the number of workers exposed, as well as the total duration of exposure, to hyperbaric pressure during tunnel construction. These advances in technology have substantially modified the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the current OSHA compressed-air standard for construction at 29 CFR 1926.803.

In addition to the reduced exposures resulting from the innovations in tunnel-excavation methods, Obayashi—Jay Dee asserts that innovations in hyperbaric medicine and technology improve the safety of decompression from hyperbaric exposures. These procedures, however, deviate from the decompression process that OSHA requires for construction in 29 CFR 1926.803(f)(1) and the decompression tables in Appendix A of 29 CFR 1926, subpart S. Nevertheless, according to Obayashi—Jay Dee, their use of decompression protocols incorporating oxygen is more efficient, effective, and safer for tunnel workers than compliance with the decompression tables specified by the existing OSHA standard.

Obayashi—Jay Dee contends that the alternative safety measures included in the application provide Obayashi—Jay Dee's workers with a place of employment that is at least as safe as they would be under OSHA's compressed-air standard for construction. OJD also provided OSHA a project-specific HOM (OSHA–2026–0001–0003) for the Cemetery Brook Drain Tunnel Project that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained airlock attendants and hyperbaric or

compressed-air workers to support their assertions of equivalency in worker protection.

OSHA included all the above information in the **Federal Register** notice announcing Obayashi—Jay Dee's variance application and did not receive any comments disputing any of that information, including the safety assertions made by Obayashi—Jay Dee in the variance application.

II. The Variance Application

Pursuant to the requirements of OSHA's variance regulations (29 CFR 1905.11), the applicant has certified that it notified its affected workers² of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant has certified that it informed its workers of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

III. OSHA History of Approval of Nearly Identical Variance Requests

OSHA has previously approved several nearly identical variances involving the same types of tunneling equipment used for similar projects (tunnel construction variances). OSHA notes that it granted several subaqueous tunnel construction permanent variances from the same provisions of OSHA's compressed-air standard (29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application: (1) Impregilo, Healy, Parsons, Joint Venture (IHP JV) for the Anacostia River Tunnel in Washington, DC (80 FR 50652, August 20, 2015); (2) Traylor JV for the Blue Plains Tunnel in Washington, DC (80 FR 16440, March 27, 2015); (3) Tully/OHL USA Joint Venture for the New York Economic Development Corporation's New York Siphon Tunnel project (79 FR 29809, May 23, 2014); (4) Salini-Impregilo/Healy Joint Venture for the Northeast Boundary Tunnel in Washington, DC (85 FR 27767, May 11, 2020); (5) McNally/Kiewit SST for the Shoreline Storage Tunnel in Cleveland, Ohio (88 FR 15080, March 10, 2023); (6) Traylor Shea Joint Venture for the Alexandria RiverRenew Tunnel Project in Alexandria, Virginia and Washington, DC (88 FR 15090, March 10, 2023); (7) Traylor-Sundt Joint Venture, for the Integrated Pipeline Tunnel Project in

Dallas, Texas (88 FR 83152, November 28, 2023); (8) Ballard Marine Construction for the Bay Park Conveyance Tunnel Project in Nassau County, New York (89 FR 8442, February 7, 2024); (9) Ballard Marine Construction for the Lower Olentangy Tunnel Project in Columbus, Ohio (89 FR 78906, September 26, 2024); and (10) McNally/ASI Marine for the Southerly Tunnel and Consolidation Project in Cleveland, Ohio (90 FR 60752, December 29, 2025). OSHA also granted an interim order to Ballard Marine Construction for the Suffolk County, New York Outfall Tunnel Project (86 FR 5253, January 19, 2021). The proposed alternate conditions in this notice are nearly identical to the alternate conditions of the previous permanent variances.³ OSHA is not aware of any injuries or other safety issues that arose from work performed under these conditions in accordance with the previous variances.

IV. Applicable OSHA Standard and the Relevant Variance

A. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression in accordance with the decompression tables in Appendix A of 29 CFR 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA decompression tables, the applicant proposes to use newer decompression schedules (the 1992 French Decompression Tables) that rely on staged decompression and supplement breathing air used during decompression with air or oxygen (as appropriate).⁴ The applicant asserts decompression protocols using the 1992 French Decompression Tables for air or oxygen as specified by the Cemetery Tunnel Drain Project-specific HOM are safer for tunnel workers than the decompression protocols specified in

³ The previous tunnel construction variances allowed further deviation from OSHA standards by permitting employee exposures above 50 p.s.i.g., based on the composition of the soil and the amount of water that will be above the tunnel for various sections of this project. The current permanent variance includes substantively the same safeguards as the variances that OSHA granted previously even though employees will not be exposed to pressures higher than 37 p.s.i.g.

⁴ In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in Appendix A by using: (1) staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

² See the definition of "Affected employee or worker" in section VII.C of this Notice.

Appendix A of 29 CFR 1926 Subpart S. Accordingly, the applicant commits to following the decompression procedures described in that HOM, which requires Obayashi—Jay Dee to follow the 1992 French Decompression Tables to decompress compressed air workers (CAWs) after they exit the hyperbaric conditions in the working chamber.

Depending on the maximum working pressure and exposure times, the 1992 French Decompression Tables provide for air decompression with or without oxygen. Obayashi—Jay Dee asserts that oxygen decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) keeping external pressure as low as possible to reduce the formation of gas bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of nitrogen elimination; (4) improving the quality of breathing during decompression stops so that workers are less tired and to prevent bone necrosis; (5) reducing decompression time by approximately 33 percent as compared to air decompression; and (6) reducing inflammation.

In addition, the project-specific HOM requires a physician, certified in hyperbaric medicine, to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and experienced airlock attendant is also required to be present during hyperbaric exposures and decompression. This airlock attendant is to operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor, who is trained in hyperbaric operations, procedures, and safety, directly oversees all hyperbaric interventions, and ensures that staff follow the procedures delineated in the HOM or by the attending physician.

B. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

Obayashi—Jay Dee seeks a permanent variance from the OSHA standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is conducting the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained airlock attendant and under the oversight of the hyperbaric supervisor.

Breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's

tissues. The greater the hyperbaric pressure under these conditions and the more time spent under the increased pressure, the greater the amount of nitrogen gas is dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in decompression illness (DCI), commonly referred to as "the bends." This description of the etiology of DCI is consistent with current scientific theory and research on the issue.

The 1992 French Decompression Tables, proposed for use by the applicant, provide for stops during worker decompression (*i.e.*, staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the use of automatically regulated continuous decompression.⁵ In addition, the applicant asserts that staged decompression administered in accordance with its HOM is at least as effective as an automatic controller in regulating the decompression process because the HOM requires a hyperbaric supervisor who directly supervises all hyperbaric interventions and ensures that the airlock attendant, who is a

⁵ See, *e.g.*, Dr. Eric Kindwall, EP (1997), Compressed air tunneling and caisson work decompression procedures: development, problems, and solutions. *Undersea and Hyperbaric Medicine*, 24(4), pp. 337–345. This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard. Dr. Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, "Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1h, at least half the time is spent at pressures less than 2 p.s.i.g. . . ., which provides less and less meaningful bubble suppression" In addition, Dr. Kindwall addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that "[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control."

competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops.

C. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber of sufficient size to accommodate all CAWs being decompressed at the end of the shift when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

Space limitations in the TBM do not allow for the installation and use of an additional special decompression lock or chamber. The applicant proposes that it be permitted to rely on the airlocks (inner lock and outer lock) in lieu of adding a separate, special decompression chamber. Because only a few workers out of the entire crew are exposed to hyperbaric pressure, the airlocks (which, as noted earlier, connect directly to the working chamber) are of sufficient size to accommodate all of the exposed workers during decompression. The applicant uses the existing airlocks, each of which adequately accommodates a three-member crew for this purpose, when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, the main chamber permits the crew to stand and extend their extremities. In the event of an emergency or requirement to conduct decompression outside of the main chamber, the applicant will have both a medical and shuttle chamber onsite during tunneling operations, both of which are double compartment chambers equipped to support hyperbaric medical treatment. The shuttle chamber supports limited hyperbaric medical treatment while the medical lock supports full medical treatment. The medical and shuttle chambers will be on standby during hyperbaric and post-hyperbaric interventions in the event there is a requirement to treat personnel suffering with decompression illness. The shuttle chamber shall be stationed within the tunnel as close as possible to the main chamber. Workers will have the ability to exit the main chamber (during decompression stops) and move into the shuttle chamber under the strict planning and supervision of the hyperbaric supervisor and hyperbaric physician. The shuttle chamber will

have the ability to additionally lock onto the on-site medical lock as needed and as directed by the hyperbaric physician. For hyperbaric treatment purposes, both the shuttle and medical chambers will enable CAWs to move about and flex their joints and receive treatment as required. The applicant asserts that this alternative arrangement is as effective as a special decompression chamber in that it has sufficient space for all the CAWs at the end of a shift and enables the CAWs to move about and flex their joints to prevent neuromuscular problems.

V. Decision

After reviewing the proposed alternatives, OSHA has determined that the applicant's proposed alternatives, on the whole, subject to the conditions in the request and imposed by this permanent variance, provide measures that are as safe and healthful as those required by the cited OSHA standards addressed in section IV of this notice.

In addition, OSHA has determined that each of the following alternatives are at least as effective as the specified OSHA requirements:

A. 29 CFR 1926.803(f)(1)

The applicant has proposed to implement equally effective alternative measures to the requirement in 29 CFR 1926.803(f)(1) for compliance with OSHA's decompression tables. The HOM specifies the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM also specifies the decompression tables the applicant proposes to use (the 1992 French Decompression Tables). Depending on the maximum working pressure and exposure times during the interventions, the tables provide for decompression using air, pure oxygen, or a combination of air and oxygen. The decompression tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.*, staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced airlock attendant, experienced in recognizing decompression sickness or illnesses and injuries, will be present. Of key importance, a hyperbaric supervisor, trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures

delineated in the project-specific HOM or by the attending physician.

Prior to granting the previous permanent variances to Traylor JV, IHP JV, Tully/OHL JV, Salini-Impregilo/Healy JV, McNally/Kiewit SST JV, Traylor Shea JV, McNally/ASI Marine and Ballard Marine Bay Park Tunnel New York, OSHA conducted a review of the scientific literature and concluded that the alternative decompression method (*i.e.*, the 1992 French Decompression Tables) Obayashi—Jay Dee proposed would be at least as safe as the decompression tables specified by OSHA when applied by trained medical personnel under the conditions imposed by the permanent variance.

Some of the literature indicates that the alternative decompression method may be safer, concluding that decompression performed in accordance with these tables resulted in a lower occurrence of DCI than decompression conducted in accordance with the decompression tables specified by the standard. For example, H. L. Andersen studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996).⁶ This project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Andersen observed 6 DCI cases out of 7,220 decompression events and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08% compared to a previous incidence rate of 0.14%. The DCI incidence in the study by H. L. Andersen is substantially less than the DCI incidence reported for the decompression tables specified in Appendix A.

OSHA found no studies in which the DCI incidence reported for the 1992 French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables.⁷

OSHA's experience with the previous ten variances, which all incorporated nearly identical decompression plans and did not result in safety issues, also provides evidence that the alternative procedure as a whole is at least as effective for this type of tunneling project as compliance with OSHA's

⁶ Andersen HL (2002). Decompression sickness during construction of the Great Belt tunnel, Denmark. *Undersea and Hyperbaric Medicine*, 29(3), pp. 173–188.

⁷ Le Péchon JC, Barre P, Baud JP, Ollivier F (September 1996). Compressed air work—French Tables 1992—operational results. *JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS*, pp. 1–5 (see Ex. OSHA–2012–0036–0005).

decompression tables. The experience of State Plans⁸ that granted variances (Nevada, Oregon and Washington)⁹ or promulgated a new standard (California)¹⁰ for hyperbaric exposures occurring during similar subaqueous tunnel-construction work provide additional evidence of the effectiveness of this alternative procedure.

B. 29 CFR 1926.803(g)(1)(iii)

The applicant developed, and proposed to implement, an equally effective alternative to 29 CFR 1926.803(g)(1)(iii), which requires the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The applicant's alternative includes using the 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI, using a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and providing a competent hyperbaric supervisor and attending physician certified in hyperbaric medicine to oversee all hyperbaric operations.

In reaching this conclusion, OSHA again notes the experience of previous nearly identical tunneling variances, the experiences of States with OSHA-approved State Plans, and a review of the literature and other information noted earlier.

C. 29 CFR 1926.803(g)(1)(xvii)

The applicant developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by 29 CFR 1926.803(g)(1)(xvii). The TBM's airlocks (inner and outer locks) appear to satisfy all of the conditions of the special decompression chamber, including that they provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression

⁸ In Section 18 of the OSH Act, Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to States and territories which have developed and are operating their own job safety and health programs as "States with OSHA-approved State Plans." Their programs must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards (29 U.S.C. 667).

⁹ These state variances are available in the docket for the 2015 Traylor JV variance: Exs. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0005 (Oregon), and OSHA–2012–0035–0004 (Washington).

¹⁰ See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at <http://www.dir.ca.gov/title8/sb7g26a154.html>.

times up to 360 minutes. Therefore, again noting OSHA's previous experience with nearly identical variances including the same alternative, OSHA preliminarily determined that the TBM's airlocks (inner and outer locks) function as effectively as the special decompression chamber required by the standard.

Based on a review of available evidence, the experience of State Plans that granted variances (Nevada, Oregon, and Washington)¹¹ or promulgated a new standard (California)¹² for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, and the information provided in the applicant's variance application, OSHA is granting the permanent variance.

Pursuant to Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(d)), and based on the record discussed above, the agency finds that when Obayashi—Jay Dee complies with the conditions of the following order, the working conditions of the workers are at least as safe and healthful as if Obayashi—Jay Dee complied with the working conditions specified by paragraphs (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803. Therefore, Obayashi—Jay Dee must: (1) comply with the conditions listed below under "Conditions Specified for the Permanent Variance" for the period between the date of this notice and completion of the Cemetery Brook Drain Tunnel Project; (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the conditions, including the affected employees of other employers, using the same means it used to inform these employees of the application for a permanent variance. Additionally, this order will remain in effect until one of the following conditions occurs: (1) completion of the Cemetery Brook Drain Tunnel Project; or (2) OSHA modifies or revokes this final order in accordance with 29 CFR 1905.13.

VI. Description of the Specified Conditions for the Permanent Variance

The conditions for the variance are set out in the Order at the end of this document. This section provides additional detail regarding the conditions in the Order.

Condition A: Scope

The scope of the permanent variance limits coverage to the work situations specified. Clearly defining the scope of the permanent variance provides Obayashi—Jay Dee, their employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the permanent variance applies. To the extent that Obayashi—Jay Dee exceeds the defined scope of this variance, it will be required to comply with OSHA's standards. This permanent variance applies only to the applicant, Obayashi—Jay Dee, and only to the remainder of construction work on the Cemetery Brook Drain Tunnel Project.

Condition B: List of Abbreviations

Condition B defines abbreviations used in the permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition C: Definitions

The condition defines a series of terms, mostly technical terms, used in the permanent variance to standardize and clarify their meaning. OSHA believes that defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition D: Safety and Health Practices

This condition requires the applicant to develop and submit to OSHA a HOM specific to the Cemetery Brook Drain Tunnel Project at least six months before using the TBM for tunneling operations. The applicant must also submit, at least six months before using the TBM, proof that the TBM's hyperbaric chambers have been designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of the most recent edition of ASME PVHO-1 (*Safety Standards for Pressure Vessels for Human Occupancy*). These requirements ensure that the applicant develops hyperbaric safety and health procedures suitable for the project.

The submission of the HOM enables OSHA to determine whether the safety and health instructions and measures it specifies are appropriate to the field conditions of the tunnel (including expected geological conditions), conform to the conditions of the

variance, and adequately protect the safety and health of the CAWs. It also facilitates OSHA's ability to ensure that the applicant is complying with these instructions and measures. The requirement for proof of compliance with ASME PVHO-1 is intended to ensure that the equipment is structurally sound and capable of performing to protect the safety of the employees exposed to hyperbaric pressure. The applicant has submitted the HOM and proof of compliance with the most recent edition of ASME PVHO-1.

Additionally, the condition includes a series of related hazard prevention and control requirements and methods (e.g., decompression tables, job hazard analyses (JHA), operations and inspections checklists, incident investigation, and recording and notification to OSHA of recordable hyperbaric injuries and illnesses) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Condition E: Communication

This condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during hyperbaric operations. Availability of such reliable means of communications enables affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during TBM operations.

Condition F: Worker Qualification and Training

This condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work is intended to ensure that they recognize, and respond appropriately to, hyperbaric safety and

¹¹ These state variances are available in the docket: Exs. OSHA-2012-0035-0006 (Nevada), OSHA-2012-0035-0007 (Oregon), and OSHA-2012-0035-0008 (Washington).

¹² See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at <http://www.dir.ca.gov/title8/sb7g26a154.html>.

health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Paragraph (2)(e) of this condition requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if the workers believe they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Condition G: Inspections, Tests, and Accident Prevention

Condition G requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems, and associated work areas. This condition helps to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations. The condition also enhances worker safety by reducing the risk of hyperbaric-related emergencies.

Paragraph (3) of this condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the TBM, and maintain these documents at the jobsite for the duration of the job. This requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Condition H: Compression and Decompression

This condition requires the applicant to consult with the designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW and then implement the procedures recommended by the medical advisor. This provision ensures that the applicant consults with the medical advisor, and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during TBM operations. Accordingly,

CAWs requiring acclimation have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition will prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the TBM.

Condition I: Recordkeeping

Under OSHA's recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, the employer must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions, or any other work condition, by completing the OSHA Form 301 Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses. The applicant did not seek a variance from this standard and therefore Obayashi—Jay Dee must comply fully with those requirements.

Examples of important information to include on the OSHA Form 301 Injury and Illness Incident Report (along with the corresponding questions on the form) are:

Q14

- the task performed;
- the composition of the gas mixture (e.g., air or oxygen);
- an estimate of the CAW's workload;
- the maximum working pressure;
- temperature in the work and decompression environments;
- unusual occurrences, if any, during the task or decompression

Q15

- time of symptom onset;
- duration between decompression and onset of symptoms

Q16

- type and duration of symptoms;
- a medical summary of the illness or injury

Q17

- duration of the hyperbaric intervention;
- possible contributing factors;
- the number of prior interventions completed by the injured or ill CAW; and the pressure to which the CAW was exposed during those interventions.¹³

Condition I adds additional reporting responsibilities, beyond those already

required by the OSHA standard. The applicant is required to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under Condition I, in concert with the information provided under Condition J (using OSHA Form 301 Injury and Illness Incident Report to investigate and record hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, and 1904.8 –.12), enables the applicant and OSHA to assess the effectiveness of the permanent variance in preventing DCI and other hyperbaric-related effects.

Condition J: Notifications

Under the notifications condition, the applicant is required, within specified periods of time, to notify OSHA of: (1) any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of hyperbaric exposures during TBM operations; and in-patient hospitalization, amputation, loss of an eye or fatality that occurs during other operations must also be reported pursuant to 29 CFR 1910.39(a); (2) provide OSHA a copy of the hyperbaric exposures incident investigation report (using OSHA Form 301 Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the Concord, New Hampshire OSHA Area Office within 15 working days should the applicant need to revise the HOM to accommodate changes in its compressed-air operations that affect Obayashi—Jay Dee's ability to comply with the conditions of the permanent variance; and (6) provide OTPCA and the Concord, New Hampshire OSHA Area Office at the end of the project, with a report evaluating the effectiveness of the decompression tables.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 Injury and Illness Incident Report) is more restrictive than the current recordkeeping requirement of completing OSHA Form 301 Injury and

¹³ See 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631); recordkeeping forms and instructions <https://www.osha.gov/recordkeeping/forms>.

Illness Incident Report within 7 calendar days of the incident (29 CFR 1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related hyperbaric (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing hyperbaric incidents, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, its employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and based on this assessment, whether to revise or revoke the conditions of the permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this condition requires the applicant to notify OSHA if it ceases to do business, has a new address or location for the main office, or transfers the operations covered by the permanent variance to a successor company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the permanent variance and expedite the agency's administration and enforcement of the permanent variance. Stipulating that the applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by the permanent variance, thereby ensuring the safety of workers involved in performing the operations covered by the permanent variance.

VII. Order

As of the effective date of this final order, OSHA is revoking the interim order granted to the employer on May 29, 2026 (91 FR 32095) and replacing it with a permanent variance order.

OSHA issues this final order authorizing Obayashi—Jay Dee to comply with the following conditions instead of complying with the

requirements of 29 CFR 1926.803 (f)(1), (g)(1)(iii), and (g)(1)(xvii). These conditions are:

A. Scope

The permanent variance applies only when Obayashi—Jay Dee stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform an intervention (*i.e.*, inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

The permanent variance applies only to work:

1. That occurs in conjunction with construction of the Cemetery Brook Drain Tunnel Project, a tunnel constructed using advanced shielded mechanical-excavation techniques and involving operation of a TBM;
2. In the TBM's forward section (the working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber; and
3. Performed in compliance with all applicable provisions of 29 CFR part 1926 except for the requirements specified by 29 CFR 1926.803 (f)(1), (g)(1)(iii), and (g)(1)(xvii).

4. This order will remain in effect until one of the following conditions occurs: (1) completion of the Cemetery Brook Drain Tunnel Project; or (2) OSHA modifies or revokes this final order in accordance with 29 CFR 1905.13.

B. List of Abbreviations

Abbreviations used throughout this permanent variance include the following:

1. CAW—Compressed-air worker
2. CFR—Code of Federal Regulations
3. DCI—Decompression Illness
4. DMT—Diver Medical Technician
5. TBM—Earth Pressure Balanced Micro-Tunnel Boring Machine
6. HOM—Hyperbaric Operations Manual
7. JHA—Job hazard analysis
8. OJD—Obayashi—Jay Dee Joint Venture
9. OSHA—Occupational Safety and Health Administration
10. OTPCA—Office of Technical Programs and Coordination Activities

C. Definitions

The following definitions apply to this permanent variance, Obayashi—Jay Dee's project-specific HOM, and all work carried out under the conditions of this permanent variance.

1. *Affected employee or worker*—an employee or worker who is affected by

the conditions of this permanent variance, or any one of his or her authorized representatives. The term "employee" has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Airlock*—A compartment/chamber with controlled pressure and parallel sets of doors to permit movement between areas at different pressures.

3. *Atmospheric pressure*—the pressure of air at sea level, generally 14.7 pounds per square inch absolute (p.s.i.a.), 1 atmosphere absolute, or 0 pounds per square inch gauge (p.s.i.g.).

4. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures not exceeding 37 p.s.i.g.

5. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.¹⁴

6. *Decompression illness*—an illness (also called decompression sickness or "the bends") caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include, but are not limited to: joint pain (also known as the "bends" for agonizing pain or the "niggles" for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a pink marbling of the skin, or in people with darker skin tones, the rash will appear as a marbled or lacy dark brown or purplish color); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas embolism (gas bubbles in the arteries that block blood flow).¹⁵

Note: Health effects associated with hyperbaric intervention, but not considered symptoms of DCI, can include: barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses, and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system

¹⁴ Adapted from 29 CFR 1926.32(f).

¹⁵ See Appendix 10 of "A Guide to the Work in Compressed-Air Regulations 1996," published by the United Kingdom Health and Safety Executive available from NIOSH at <http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-254/compReg1996.pdf>.

condition resulting from the harmful effects of breathing molecular oxygen (O₂) at elevated partial pressures).

7. *Diver Medical Technician*—Member of the dive team who is experienced in first aid.

8. *Earth Pressure Balanced Tunnel Boring Machine*—the machinery used to excavate a tunnel.

9. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.¹⁶

10. *Hyperbaric*—at a higher pressure than atmospheric pressure.

11. *Hyperbaric intervention*—a term that describes the process of stopping the TBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

12. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by Obayashi—Jay Dee for working in compressed air during the Cemetery Brook Drain Tunnel Project.

13. *Inner Lock*—primary lock of the main chamber, provides access to the working chamber for performing work on the tunnel face or TBM repair.

14. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

15. *Main Chamber*—The main compartment of the airlock.

16. *Medical Advisor*—medical professional experienced in the physical requirements of compressed air work and the treatment of decompression illness.

17. *Medical Lock*—A double compartment chamber equipped to support full hyperbaric medical treatment.

18. *Outer Lock*—The secondary lock of the main chamber, used for transferring occupants in and out of the inner lock.

19. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

20. *p.s.i.a.*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

21. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure;

pressure expressed as p.s.i.g. corresponds to pressure relative to atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Subtracting 14.7 from a pressure expressed in units of p.s.i.a. yields the gauge pressure, expressed as p.s.i.g. At sea level the gauge pressure is 0 p.s.i.g.

22. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.¹⁷

23. *Shuttle lock*—a double compartment chamber equipped to support limited medical hyperbaric treatment.

24. *Working chamber*—an enclosed space in the TBM in which CAWs perform interventions, and which is accessible only through an airlock.

D. Safety and Health Practices

1. Obayashi—Jay Dee must implement the project-specific HOM submitted to OSHA as part of the application (see OSHA–2026–0001–0003). The HOM provides the minimum requirements regarding expected safety and health hazards (including anticipated geological conditions) and hyperbaric exposures during the tunnel-construction project.

2. Obayashi—Jay Dee must demonstrate that the TBM on the project is designed, fabricated, inspected, tested, marked, and stamped in accordance with the most recent requirements of ASME PVHO–1 (*Safety Standards for Pressure Vessels for Human Occupancy*) for the TBM's hyperbaric chambers.

3. Obayashi—Jay Dee must implement the safety and health instructions included in the manufacturer's operations manuals for the TBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

4. Obayashi—Jay Dee must ensure that there are no exposures to pressures greater than 37 p.s.i.g.

5. Obayashi—Jay Dee must ensure that air or oxygen is the only breathing gas in the working chamber.

6. Obayashi—Jay Dee must follow the 1992 French Decompression Tables for air or oxygen decompression as specified in the HOM; specifically, the extracted portions of the 1992 French Decompression tables titled, "French Regulation Air Standard Tables."

7. Obayashi—Jay Dee must equip airlocks used by employees with an air or oxygen delivery system, as specified by the HOM for the project. Obayashi—Jay Dee is prohibited from storing in the tunnel any oxygen or other compressed gases used in conjunction with hyperbaric work.

8. Workers performing hot work under hyperbaric conditions must use flame-retardant personal protective equipment and clothing.

9. In hyperbaric work areas, Obayashi—Jay Dee must maintain an adequate fire-suppression system approved for hyperbaric work areas.

10. Obayashi—Jay Dee must develop and implement one or more job hazard analysis (JHA) for work in the hyperbaric work areas, and review, periodically and as necessary (e.g., after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs must include all the job functions that the risk assessment¹⁸ indicates are essential to prevent injury or illness.

11. Obayashi—Jay Dee must develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by the permanent variance (including all procedures required by the HOM approved by OSHA for the project, which this permanent variance incorporates by reference). The checklists must include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

12. Obayashi—Jay Dee must ensure that the safety and health provisions of this project-specific HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations for the project to which the HOM applies.¹⁹

E. Communication

1. Prior to beginning a shift, Obayashi—Jay Dee must implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rockslides, cave-ins, flooding, fires, or explosions.

¹⁸ See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

¹⁹ See ANSI/ASSE A10.33–2011, American National Standard for Construction and Demolition Operations—Safety and Health Program Requirements for Multi-Employer Projects, for reference.

¹⁶ Also see 29 CFR 1926.1202 for examples of hot work.

¹⁷ Adapted from 29 CFR 1926.32(m).

2. Obayashi—Jay Dee must provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

(a) Obayashi—Jay Dee must use an independent power supply for powered communication systems, and these systems must operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) Obayashi—Jay Dee must test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

F. Worker Qualifications and Training

Obayashi—Jay Dee must:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction on hyperbaric conditions, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, and document this instruction. The instruction must include:

(a) The physics and physiology of hyperbaric work;

(b) Recognition of pressure-related injuries;

(c) Information on the causes and recognition of the signs and symptoms associated with decompression illness, and other hyperbaric intervention-related health effects (*e.g.*, barotrauma, nitrogen narcosis, and oxygen toxicity);

(d) How to avoid discomfort during compression and decompression;

(e) Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure; and

(f) Procedures and requirements applicable to the employee in the project-specific HOM.

3. Repeat the instruction specified in paragraph (G) of this condition periodically and as necessary (*e.g.*, after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers, make this training available to OSHA personnel and notify the OTPCA at OSHA's national office and OSHA's Concord, New Hampshire Area Office before the training takes place.

G. Inspections, Tests, and Accident Prevention

1. Obayashi—Jay Dee must initiate and maintain a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2), including:

(a) Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

(b) Ensuring that a competent person conducts daily visual checks and weekly inspections of the TBM.

2. Obayashi—Jay Dee must remove any equipment that is found to constitute a safety hazard until Obayashi—Jay Dee corrects the hazardous condition and has the correction approved by a qualified person.

3. Obayashi—Jay Dee must maintain records of all tests and inspections of the TBM, as well as associated corrective actions and repairs, at the job site for the duration of the tunneling project and for 90 days after the final project report is submitted to OSHA.

H. Compression and Decompression

Obayashi—Jay Dee must consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

I. Recordkeeping

In addition to completing OSHA Form 301 Injury and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, Obayashi—Jay Dee must maintain records of:

1. The date, times (*e.g.*, time compression started, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The names of all supervisors and DMTs involved for each intervention.

3. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

4. The total number of interventions and the amount of hyperbaric work time at each pressure.

5. The results of the post-intervention physical assessment of each CAW for signs and symptoms of decompression

illness, barotrauma, nitrogen narcosis, oxygen toxicity or other health effects associated with work in compressed air for each hyperbaric intervention.

J. Notifications

1. To assist OSHA in administering the conditions specified herein, Obayashi—Jay Dee must:

(a) Notify the OTPCA and the Concord, New Hampshire OSHA Area Office at www.osha.gov/contactus/byoffice of any recordable injury, illness, or fatality (by submitting the completed OSHA Form 301 Injury and Illness Incident Report)²⁰ resulting from exposure of an employee to hyperbaric conditions, including those that do not require recompression treatment (*e.g.*, nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria of 29 CFR 1904. The notification must be made within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; a copy of the incident investigation (OSHA Form 301 Injuries and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality. In addition to the information required by OSHA Form 301 Injuries and Illness Incident Report, the incident-investigation report must include a root-cause determination, and the preventive and corrective actions identified and implemented.

(b) Provide certification to OTPCA and the Concord, New Hampshire OSHA Area Office within 15 working days of the incident that Obayashi—Jay Dee informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

(c) Notify the OTPCA and the Concord, New Hampshire OSHA Area Office within 15 working days and in writing, of any change in the compressed-air operations that affects Obayashi—Jay Dee's ability to comply with the conditions specified herein.

(d) Upon completion of the Cemetery Brook Drain Tunnel Project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the

²⁰ See 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses) (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631); recordkeeping forms and instructions <https://www.osha.gov/recordkeeping/forms>.

Concord, New Hampshire OSHA Area Office.

Note: The evaluation report must contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air and/or oxygen), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA Form 301 Injuries and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, and relevant medical diagnoses, and treating physicians' opinions); and (4) root causes of any hyperbaric incidents, and preventive and corrective actions identified and implemented.

(e) To assist OSHA in administering the conditions specified herein, inform the OSHA and the Concord New Hampshire OSHA Area Office as soon as possible, but no later than seven (7) days, after it has knowledge that it will:

- (i) Cease doing business;
 - (ii) Change the location and address of the main office for managing the tunneling operations specified herein; or
 - (iii) Transfer the operations specified herein to a successor company.
- (f) Notify all affected employees of this permanent variance by the same means required to inform them of its application for a permanent variance.

2. This permanent variance cannot be transferred to a successor company without OSHA approval.

OSHA hereby grants a permanent variance to Obayashi—Jay Dee Joint Venture for the completion of the Cemetery Brook Drain Tunnel Project in Manchester, New Hampshire.

VIII. Authority and Signature

David Keeling, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 7–2025 (90 FR 27878, June 30, 2025), and 29 CFR 1905.11.

Signed at Washington, DC, on October 5, 2026.

David Keeling,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–22021 Filed 10–28–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0010]

Fire Protection in Shipyard Employment Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Fire Protection in Shipyard Employment Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by December 28, 2026.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0010) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Belinda Cannon, Directorate of

Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Fire Protection in Shipyard Employment Standard specifies a number of information collection requirements. In general, the standard requires employers to develop a written fire safety plan covering elements that identify the potential fire risk hazards and procedures for reporting these hazards, employers to create, maintain, and update a written policy that describes the internal and outside fire response organizations that the employer will use, and employers to notify employees and take the necessary precautions to make sure employees are safe from fire if for any reason a fire extinguishing system stops working. The standard also requires the employer to obtain medical exams for certain workers and to create and maintain records to certify that employees have been made aware of the details of the fire safety plan and that employees have been trained as required by the standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements specified in the Fire Protection in Shipyard Employment Standard. The agency is seeking an adjustment decrease in burden from 15,744 to 15,704 hours, a difference of 40 hours. This decrease in burden is due to the decrease in the number of affected workers going from 100,139 to 99,786.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Fire Protection in Shipyard Employment Standard (29 CFR 1915, Subpart P).

OMB Control Number: 1218-0248.

Affected Public: Business or other for-profits.

Number of Respondents: 497.

Number of Responses: 184,846.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 15,704.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202-693-1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA

docket number for the ICR (Docket No. OSHA-2011-0010). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link.

Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 7-2025 (90 FR 27878).

Signed at Washington, DC, on October 5, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026-22014 Filed 10-28-26; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Revision of Existing Collection; Longshore and Harbor Workers' Compensation Act Employer's First Report of Injury or Occupational Illness (LS-202) and Employer's Supplementary Report of Accident or Occupational Illness (LS-210)

AGENCY: Office of Workers' Compensation Programs.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), is soliciting comments

concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, "Employer's First Report of Injury or Occupational Illness (LS-202), Employer's Supplementary Report of Accident or Occupational Illness (LS-210)." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: All comments must be received on or before December 28, 2026.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for WCPO-2026-0661. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.

- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL-OWCP, Division of Coal Mine Workers' Compensation, 200 Constitution Avenue NW, Suite C3520-DCMWC, Washington, DC 20210.

- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Contact Anjanette Suggs, Office of Workers' Compensation Programs, OWCP at suggs.anjanette@dol.gov (email); or (202) 354-9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers'

injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees. Legal authority for this information collection is found at 33 U.S.C. 930(a) and (b).

The LS-202 is used by employers initially to report injuries that have occurred which are covered under the Longshore Act and its related statutes. The LS-210 is used to report additional periods of lost time from work.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection request (ICR) titled, "Employer's First Report of Injury or Occupational Illness (LS-202), Employer's Supplementary Report of Accident or Occupational Illness (LS-210)."

OWCP is particularly interested in comments that:

- 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.
- Evaluate the accuracy of OWCP/DLHWC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used in the estimate.
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL-OWCP located at 200 Constitution Ave. NW, Room S-3524, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns the "Employer's First Report of Injury or Occupational Illness (LS-202) and Employer's Supplementary Report of Accident or Occupational

Illness (LS-210)." OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Revision of currently approved collection.

Agency: DOL—Office of Workers' Compensation Programs.

OMB Control Number: 1240-0003.

Affected Public: Individuals or Households.

Number of Respondents: 50,500.

Number of Responses: 50,500.

Annual Burden Hours: 12,625.00 hours.

Annual Respondent or Recordkeeper Cost: \$328,628.75.

Frequency: On occasion.

Average Time per Response: 15 minutes.

OWCP Forms: Form LS-202, Employer's First Report of Injury or Occupational Illness; Form LS-210, Employer's Supplementary Report of Accident or Occupational Illness.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2026-22022 Filed 10-28-26; 8:45 am]

BILLING CODE 4510-CF-P

NATIONAL LABOR RELATIONS BOARD

Amendment of Statement of Organization and Functions; Restructuring of National Labor Relations Board's Field Organization

AGENCY: National Labor Relations Board.

ACTION: Notice of administrative change in status of the Memphis, Tennessee Office (Subregion 26) of the National Labor Relations Board, which will be closed and the area will be served by agents working primarily from the New Orleans, Louisiana Regional Office (Region 15) and other locations.

SUMMARY: The National Labor Relations Board is closing its Memphis, Tennessee Subregional Office because it has determined that closing the office and serving the area with agents working at other locations will result in significant savings while continuing to effectively

serve the area currently served by this office.

DATES: *Effective Date:* The closure of the Memphis office is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half St. SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number) or 1-844-762-NLRB (6572) (this is a toll-free number). Hearing impaired callers who wish to speak to an NLRB representative should contact T-Mobile Relay Conference Captioning by visiting its website at <https://www.tmobileaccess.com/federal>, and submitting a form asking its Communications Assistant to call our toll-free number at 1-844-762-NLRB (6572).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has decided to close its Memphis, Tennessee Subregional Office. This change is prompted by an examination of the staffing, caseloads, and rental and operating costs for the Memphis office, which has had no personnel since 2023 due to attrition. Employees from the Agency's New Orleans and Little Rock, Arkansas offices have been, and will continue to, provide service to the area formerly covered by the Memphis Subregional office. The Board expects no adverse impact on the quality of case-handling as a result of the office closure.

Region 15, which handles cases arising in Alabama, Arkansas, Florida, Louisiana, Mississippi, and Tennessee, is headed by a Regional Director, who works in the New Orleans, Louisiana Regional office and has full authority for the processing of both unfair labor practice and representation cases in that area. Currently, the other employees in this Region work in Little Rock, Arkansas. Under this proposal, all offices except the Memphis office will continue to be open. The geographical area covered by the Region will not be changed.

In 2024, the NLRB solicited and received feedback on the proposed closure of the Memphis office. The decision to close this office in the manner set forth here was informed by comments from stakeholders. Because this is a general notice that is related to the organization of the NLRB, it is not a regulation or rule subject to notice and comment rulemaking or Executive Order 12866.

Pursuant to the change set forth here, the National Labor Relations Board has amended its Statement of Organization and Functions as follows:

Part 201—Description of Organization*Subpart B—Description of Field Organization*

(A) “Areas Served by Regional and Subregional Offices” is amended in following manner:

(1) Region 15 is amended to read as follows:

Region 15. New Orleans, Louisiana. Services *Louisiana; Mississippi*; in *Alabama*, services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; in *Arkansas*, services Clay, Craighead, Crittenden, Cross, Greene, Lee, Mississippi, Phillips, Poinsett, and St. Francis Counties; in *Florida*, services Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington Counties; in *Missouri* services Dunklin, Mississippi, New Madrid, and Pemiscot Counties; and in *Tennessee*, services Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, and Weakley Counties.

Persons may also obtain service at the Resident Office in Little Rock, Arkansas.

(Authority: 5 U.S.C. 552)

Dated: October 27, 2026.

By direction of the Board.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

[FR Doc. 2026–22091 Filed 10–28–26; 8:45 am]

BILLING CODE 7545–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2027–17 and K2027–18; MC2027–20 and K2027–21]

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:* November 3, 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).*: MC2027–17 and K2027–18; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 129 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 26, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* November 3, 2026.

III. Summary Proceeding(s)

1. *Docket No(s).*: MC2027–20 and K2027–21; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1118, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 26, 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. 2026–22086 Filed 10–28–26; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD**Proposed Collection; Comment Request**

In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork

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).

Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Application and Claim for Unemployment Benefits and Employment Service; OMB 3220-0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 231), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days).

Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325. 20 CFR 321 provides for applying and filing claims for unemployment benefits electronically.

The RRB utilizes the following forms to collect the information necessary to pay unemployment benefits. Form UI-1 (or its internet equivalent, Form UI-1 (internet)), *Application for*

Unemployment Benefits and Employment Service, is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI-1 or UI-1 (internet) also registers an unemployment claimant for the RRB's employment service.

The RRB also utilizes Form UI-3 (or its internet equivalent Form UI-3 (internet)), *Claim for Unemployment Benefits*, for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days.

Completion of Forms UI-1, UI-1(internet), UI-3, and UI-3 (internet) is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB proposes no changes to the Forms UI-1, UI-1(internet), UI-3 and UI-3 (internet).

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI-1	3,546	10	591
UI-1 (Internet)	15,662	10	2,610
UI-3	9,600	6	960
UI-3 (Internet)	108,651	6	10,865
Total	137,459		15,026

2. *Title and purpose of information collection:* Medical Reports; OMB 3220-0038.

Under sections 2(a)(1)(iv) and 2(a)(1)(v) of the Railroad Retirement Act (RRA) (45 U.S.C.231a), annuities are payable to qualified railroad employees whose physical or mental condition makes them unable to (1) work in their regular occupation (occupational disability) or (2) work at all (total disability). The requirements for establishing disability and proof of continuing disability under the RRA are prescribed in 20 CFR 220.

Annuities are also payable to (1) qualified spouses and widow(ers) under sections 2(c)(1)(ii)(C) and 2(d)(1)(ii) of the RRA who have a qualifying child who became disabled before age 22; (2) surviving children on the basis of disability under section 2(d)(1)(iii)(C), if the child's disability began before age 22; and (3) widow(ers) on the basis of disability under section 2(d)(1)(i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition that makes them unable to engage in any regular employment.

Under section 2(d)(1)(v) of the RRA, annuities are also payable to remarried widow(ers) and surviving divorced spouses on the basis of, among other things, disability or having a qualifying disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a Period of Disability and entitlement to early Medicare based on disability for qualified claimants in accordance with Section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G-3EMP, Report of Medical Condition by Employer; G-197, Authorization to Disclose Information to the Railroad Retirement Board; G-250, Medical Assessment; G-250A, Medical Assessment of Residual Functional Capacity; G-260, Report of Seizure Disorder; RL-11B, Disclosure of Hospital Medical Records; RL-11D,

Disclosure of Medical Records from a State Agency; RL-11D1, Request for Medical Evidence from Employers, and RL-250, Request for Medical Assessment, to obtain the necessary medical evidence. One response is requested of each respondent. Completion is required for all forms to obtain benefits except Form RL-11D1, which is voluntary. The RRB proposes no changes to Forms G-197 and RL-11D. The RRB proposes changes to the following forms:

Form G-3EMP

- *Section 1:* Updated start of instructions to add new first sentence "The form should be answered and signed by a railroad contact official or their delegate."; removed "or use a typewriter." reference; changed date example to "February 13, 2026" and replace "second page" with "last page" in last sentence.

- *Question 4:* Added "(typically, this is the occupation held most of the time in the last 5 or 15 years)".

- *Important Notices:* Changed last sentence of the Paperwork Reduction Act contact information to "Railroad

Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

Form G–250

- *Section 1*: Added “This form should only be completed by a medical examiner. This form should not be signed by auxiliary medical staff (e.g., registered nurse, nurse assistants, medical assistants, etc.)” at the beginning of the instructions.

- *Questions 4B, 11B, 15B, 16B, 18B, 18C, 18D, 19B, 20B*: Inserted “if any surgeries have been performed or scheduled, and whether maximum medical improvement has been achieved.” to allow an applicant or annuitant to describe or provide additional information.

- *Important Notices*: Changed last sentence of the Paperwork Reduction Act contact information to “Railroad Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

Form G–250A

- *Question A4*: Added “Crawl”.
- *Question A5*: Added “and Feelings”.
- *Question C*: Added “/Ask Questions” at the end of “Reason/Use Judgement”.
- Added “Coordinate Tasks and Set Goals”.
- Added “Be Punctual and Maintain Attendance”.
- Added “Be Aware of Hazards”.
- Added “Engage in Travel”.
- Added “Attention”.
- *Important Notices*: Changed last sentence of the Paperwork Reduction Act contact information to “Railroad Retirement Board, ATTN: Bureau of

Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

Form G–260

- *Section 1*: Added “This form should only be completed by a medical examiner. This form should not be signed by auxiliary medical staff (e.g., registered nurses, nurse assistants, medical assistants, etc.)” and replaced “Item 26” with “Section 15.” in the last paragraph.

- *Section 2*: Updated beginning of sentence to “Print all answers in ink.” and changed the date example to “February 13, 2026”.

- *Question 10a*: Inserted “frequency (e.g. daily, weekly, monthly, or yearly) and”.

- *Important Notices*: Changed last sentence of the Paperwork Reduction Act contact information to “Railroad Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

Form RL–11B

- *Page 1*: Changed the last sentence of the second paragraph to “If you are unable to provide the records without charge, please contact this office at [fillable] to discuss alternative options before you respond.”

- *Paperwork Reduction Act Notice*: Changed last sentence of the Paperwork Reduction Act contact information to “Railroad Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

Form RL–11D1

- *Top of Page 2*: Added blank fields to allow the RRB personnel to automate adding the claimant’s name and claim

number to resolve issue when agency only receive page 2 of the form.

- *Page 2*: Please return this form and any medical records to section: Removed return address and replaced with fields to allow RRB personnel automate adding the appropriate office return address.

- *Paperwork Reduction Act Notice*: Changed last sentence of the Paperwork Reduction Act contact information to “Railroad Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

Form RL–250

- *Page 1*: Changed layout of the end of the second sentence to first bullet “Submit a copy of your office records on the claimant’s treatment for at least the last 12 months. Also, include copies of all available laboratory, hospital, and consultative reports. Authorization to release medical information is enclosed.” and second bullet “Complete the enclosed Form G–250, Medical Assessment. This is not an authorization to conduct a new examination.”

- *Page 1*: Inserted “and office records” in the fifth paragraph.

- *Page 1*: Moved last sentence to the end of second new bullet in paragraph 2.

- *Page 2*: Deleted first paragraph.

- *Page 2*: Moved sentence to the end of the first new bullet in paragraph 2.

- *Paperwork Reduction Act Notice*: Changed last sentence of the Paperwork Reduction Act contact information to “Railroad Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611–1275.”

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–3EMP	85	10	15
G–197	2,102	10	351
G–250	1,750	30	875
G–250A	12	20	4
G–260	53	25	23
RL–11B	245	10	41
RL–11D	15	10	3
RL–11D1	203	20	68
RL–250	804	10	134
Total	5,269		1,514

3. *Title and purpose of information collection*: Placement Service; OMB 3220–0057.

Section 12(i) of the Railroad Unemployment Insurance Act (RUIA)

(45 U.S.C. 362), authorizes the RRB to establish, maintain, and operate free employment offices to provide claimants for unemployment benefits with job placement opportunities.

Section 704(d) of the Railroad Reorganization Act of 1973, as amended, and as extended by the Consolidated Omnibus Budget Reconciliation Act of 1985, required the

RRB to maintain and distribute a list of railroad job vacancies, by class and craft, based on information furnished by rail carriers to the RRB. Although the requirement under the law expired effective August 13, 1987, the RRB has continued to obtain this information in keeping with its employment service responsibilities under Section 12(k) of the RUIA. Application procedures for the job placement program are prescribed in 20 CFR 325. The procedures pertaining to the RRB's obtaining and distributing job vacancy reports furnished by rail carriers are described in 20 CFR 346.1.

The RRB currently utilizes four forms to obtain information needed to carry out its job placement responsibilities. Forms ES-21, *Referral to State Employment Service*, and ES-21c, *Report of State Employment Service Office*, are used by the RRB to provide placement assistance for unemployed railroad employees through arrangements with State Employment Service offices. Form UI-35, Field

Office Record of Claimant Interview, is used primarily by the RRB to conduct in-person interviews of claimants for unemployment benefits. Completion of these forms is required to obtain or maintain a benefit. In addition, the RRB also collects Railroad Job Vacancies information received voluntarily from railroad employers. The RRB proposes the following changes to Forms ES-21, ES-21c and Form UI-35:

Form ES-21

- The RRB proposes to remove Form ES-21 from the information collection due to Field Service no longer disseminating and tracking Form ES-21 sent to claimants for job placement assistance as claimants are increasingly using other digital federal, state, and private job placement assistance platforms.

Form ES-21c

- The RRB proposes to remove Form ES-21c from the information collection due to Field Service no longer

disseminating and tracking Form ES-21c sent to claimants for job placement assistance as claimants are increasingly using other digital federal, state, and private job placement assistance platforms.

Form UI-35

- *Form Title*: Changed to "Record of Claimant Interview".
- *Question 3*: Added "Email Address."
- *Question 6a*: Bolded instructions.
- *Question 6b(3)*: Added "Email Address" and added "Mailing" to Address field.
- *Question 8a*: Changed to "Employer-provided job protection or wage guarantee payments?"
- *Question 14*: Changed to "Enter the following information about the kinds of work that you are qualified for and willing to accept (railroad and nonrailroad):"
- *Question 14c*: Changed to "Maximum miles willing to commute:".
- *Page 7, Rights and requirements section*: Removed "Central register".

ESTIMATE OF CURRENT ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI-35 in person	4,254	7	496
UI-35 by mail	140	11	26
Job Vacancies	470	10	78
Total	4,864		600

4. Title and purpose of information collection: Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220-0185.

Under Section 7(d) of the Railroad Retirement Act (45 U.S.C. 231), the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into "buy-in agreements" with the Secretary of Health and Human Services for the purpose of enrolling certain groups of low-income individuals under the Medicare medical insurance (Part B) program and paying the premiums for

their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB utilizes Form RL-380-F, *Report of Medicaid State Office on Beneficiary's Buy-In Status*, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in the states in which they reside. Completion of Form RL-380-F is

voluntary. One response is received from each respondent. The RRB proposes the following changes to Form RL-380-F:

- Removed "Medicaid Number" section to comply with Public Law 114-10, Medicare Access, and CHIP Reauthorization Act of 2015 (MACRA).
- *Paperwork Reduction Act Notice*: Changed last sentence of the Paperwork Reduction Act contact information to "Railroad Retirement Board, ATTN: Bureau of Information Services/Policy and Compliance, 844 N Rush St., Chicago, IL 60611-1275."

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
RL-380-F	600	10	100

5. *Title and purpose of information collection: Report of Stock Options and Other Payments; OMB 3220-0203.*

The Railroad Retirement Board (RRB) is directed by 45 U.S.C. 231f(c)(2) to establish a financial interchange (FI) between the railroad retirement and social security systems to place the Social Security Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds and the Centers for Medicare and Medicaid Services (CMS) Hospital Insurance (HI) Trust Fund in the same condition they would have been had railroad employment been covered by the Social Security Act and Federal Insurance Contributions Act (FICA). Each year, the RRB estimates the benefits and expenses that would have been paid by these trust

funds, as well as the payroll taxes and income taxes that would have been received by them. To make these estimates, the RRB requires information on all earnings data that are not taxable under the Railroad Retirement Tax Act (RRTA) but would be taxable under FICA.

The payroll information collected from the BA-15 is essential for the calculation of payroll taxes and benefits used by the FI. Failure to collect NQSOs and ratification payment information will result in understating the payroll taxes that should have been collected and the benefit amounts that would have been payable under the Social Security Act for FI purposes. Accurate compensation file tabulations are also an integral part of the data needed to

estimate future tax revenues and corresponding FI amounts. Without information on NQSOs and ratification payments, the amount of funds to be transferred between the RRB, SSA and CMS cannot be determined.

Form BA-15, Report of Stock Options and Other Payments, to request employer information and report identifying information as well as each employee's social security number, name, and compensation information, which will be reported annually in a quarterly breakdown. The RRB receives Form BA-15 by secure Email, File Transfer Protocol (FTP), or via CD-ROM. The RRB proposes no changes to Form BA-15.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
BA-15 (by secure E-mail, FTP, or CD-ROM)—Positive	10	300	50
BA-15 (by secure E-mail, FTP, or CD-ROM)—Negative	590	15	148
Total	600		198

Additional Information or Comments:

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material 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 should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2026-22031 Filed 10-28-26; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106731; File No. SR-FINRA-2026-022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Address Binary Options, Options Whose Payout Is Based on Specified Metrics, and Options Cleared by a Registered Clearing Agency Other Than The Options Clearing Corporation

October 26, 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 October 22, 2026, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act, ³ which renders the proposal effective upon

receipt of this filing by the Commission. 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

FINRA is proposing to amend FINRA Rules 2220, 2351, 2357, 2360, and 4210 to address binary options, options whose payout is based on specified metrics, and options cleared by a registered clearing agency other than The Options Clearing Corporation.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org> and at the principal office of FINRA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Multiple national securities exchanges have filed proposals with the Commission to list and trade new types of binary options whose exercise settlement amount is established at the creation of the option and whose payout is based on the value of an issuer's reported financial or operating metrics ("binary metric options"), some of which may be cleared by a registered clearing agency other than The Options Clearing Corporation ("OCC"), and the Commission has approved at least one such proposal.⁴ While the specific proposals vary in some respects, these proposals collectively reflect a new category of exchange-listed options product: cash-settled, European-style binary options whose payouts are determined solely by whether an issuer's reported financial or operating metric (or other specified condition), such as quarterly revenue, earnings per share, or another metric disclosed in the issuer's SEC filings, meets or exceeds a defined threshold at expiration. These products generally have an exercise settlement amount of \$1, meaning that at expiration each contract pays either \$1 or \$0 depending on whether the underlying metric has met or exceeded the specified threshold.

Binary metric options differ from most historically listed options products by referencing an underlying metric rather than a security or an index of securities, and in some cases by clearing through a registered clearing agency other than OCC.⁵ The applicable trading mechanics of each binary metric option are governed by the rules of the

exchange on which the contracts are listed.

FINRA Rule 2360 (Options) sets forth a number of requirements for FINRA members specific to options activity, including, among other things, requirements relating to position limits, large options position reporting ("LOPR"), delivery of disclosure documents, confirmations, transactions with issuers, account statements, account opening, recordkeeping, suitability, and supervision. Additionally, FINRA Rule 2220 (Options Communications) sets forth options-specific communications requirements and FINRA Rule 4210 (Margin Requirements) includes margin requirements specific to options. FINRA intends that the rules apply to all listed options products, including binary options, options on metrics, and options cleared through any registered clearing agency.⁶

FINRA is therefore proposing amendments to Rules 2220, 2360, and 4210 to clarify the application of existing options requirements to binary options, options on metrics, and options cleared through a registered clearing agency other than OCC, which would include the new binary metric options products discussed above. As described in further detail below, the proposed rule change would accomplish this goal by updating the definitional framework under Rule 2360 to, among other clarifying changes, add new terms for binary options, registered clearing agencies, and underlying metrics; clarify the application of position limit and LOPR requirements in Rule 2360 to binary options and options on metrics; amend the disclosure document delivery requirement in Rule 2360 to include options issued by a registered clearing agency other than OCC; update provisions throughout Rules 2220, 2357, 2360, and 4210 to refer to registered clearing agencies generally rather than specifically to OCC, as appropriate; update provisions throughout Rules 2220 and 2360 to incorporate references to "metric;" and update Rules 2351 and 2360 to make other needed changes, including updating cross-references, making stylistic changes, and minor corrections to existing provisions.

The proposed changes are collectively designed to clarify the application of

existing options requirements to binary options, options on metrics, and options cleared by any registered clearing agency, such that the rules apply to such options—including binary metric options—in a manner that is substantially comparable to other listed options products.

Proposed Amendments to Rule 2360

Rule 2360 establishes a comprehensive regulatory framework governing members' options trading activity. Rule 2360(a) sets forth a number of definitions for terms used in Rule 2360, including to distinguish between standardized options (*i.e.*, listed options) and conventional options, (*i.e.*, over-the-counter or "OTC" options). Rule 2360(b) clarifies the applicability of Rule 2360 and sets forth provisions regarding positions and exercise limits, LOPR requirements, delivery of disclosure documents, confirmations, transactions with issuers, account statements, account openings, recordkeeping, suitability, and supervision. Rule 2360(c) sets forth requirements for the portfolio margining disclosure statement and acknowledgement, and Supplementary Material .01 through .03 to Rule 2360 provide illustrative examples of position limit requirements, further explanation regarding the delta hedging exemption control relationship, and clarification regarding position limits for exchange-traded funds. The proposed changes to Rule 2360 are described in greater detail below.

Definitions

FINRA is proposing changes to Rule 2360(a) to include three new defined terms. First, FINRA proposes to add a new defined term, "Registered Clearing Agency," meaning a clearing agency registered with the Commission pursuant to Section 17A of the Exchange Act.⁷ This proposed definition is necessary to enable FINRA's options rules to apply to listed options regardless of which SEC-registered clearing agency issues or guarantees the contracts. FINRA is making several changes throughout Rule 2360 to replace references to OCC with Registered Clearing Agency.

Second, FINRA proposes to add a new defined term, "binary option," meaning a cash-settled option contract having an exercise settlement amount that is established at the creation of the option and where the option holder is entitled to the exercise settlement amount only if the settlement value of the binary option overlying a security, index, or

⁴ See, e.g., Securities Exchange Act Release No. 106659 (October 13, 2026), 91 FR 65854 (October 16, 2026) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-CBOE-2026-061) ("Cboe Binary KPI Options Approval Order"); Securities Exchange Act Release No. 106182 (August 24, 2026), 91 FR 55384 (August 27, 2026) (Notice of Filing of File No. SR-MEMX-2026-25); Securities Exchange Act Release No. 106370 (September 15, 2026), 91 FR 59199 (September 18, 2026) (Notice of Filing of File No. SR-NYSEARCA-2026-93); Securities Exchange Act Release No. 106367 (September 15, 2026), 91 FR 59217 (September 18, 2026) (Notice of Filing of File No. SR-NYSEAMER-2026-82); SR-MRX-2026-41 (filed October 2, 2026).

⁵ Exchanges may use varying terminology in describing their specific products. For the purposes of FINRA rules, FINRA refers to all underlying metrics as "metrics" and the products as "binary metric options."

⁶ Historically, listed options have settled based on the price of an individual security or security index and clear through OCC; as a result, FINRA rules generally refer to options with these existing structures and clearing arrangement. Additionally, although certain types of binary options are already listed and traded on exchanges, some FINRA rules also do not clearly contemplate binary option structures.

⁷ 15 U.S.C. 78q-1(a).

metric, at expiration, (1) equals or is greater than the exercise price for a call binary option, or (2) is less than the exercise price for a put binary option. The proposed definition would further provide that the applicable trading mechanics for such contracts are governed by the rules of the exchange on which they are listed. This proposed definition is intended to broadly encompass a variety of binary options structures.⁸

Third, FINRA proposes to add a new defined term, “underlying metric,” meaning a metric underlying an option, including any financial or operating metric or condition on which an option’s payout is based. This proposed definition would complement the existing definitions of “underlying security” and “underlying index.”

In addition to these newly defined terms, FINRA proposes to consolidate and replace the existing definitions of “standardized equity option” and “standardized index option,” with a single, unified definition of “standardized option” that encompasses any options contract issued, or subject to issuance, by a Registered Clearing Agency that is not a FLEX Option and not an OCC Cleared OTC Option. The consolidated definition identifies standardized equity options, standardized index options, and standardized metric options as examples of standardized options. This proposed consolidation preserves the existing treatment of standardized equity options and standardized index options while ensuring standardized binary options listed on national securities exchanges and issued or guaranteed by a Registered Clearing Agency are subject to the same treatment. Conforming changes would be made throughout Rule 2360 to reflect this new consolidated term.

FINRA also proposes conforming and clarifying amendments to various other definitions set forth in Rule 2360(a). First, FINRA proposes to amend the definitions of “call,” “put,” “class of options,” and “series of options” to add “metric” alongside “security” and “index,” so that these terms explicitly include options overlying a metric. Corresponding conforming amendments are proposed to the definitions of “exercise price,” “expiration date,” “FLEX Equity Option” (to be renamed as “FLEX Option” as described below), “clearing member,” “conventional

option,” “conventional index option,” “covered,” “OCC Cleared OTC Option,” “options trading,” and “underlying security.”⁹

Second, FINRA proposes conforming and clarifying amendments to the definitions of “clearing member,” “conventional index option,” “conventional option,” “covered,” “expiration date,” “FLEX Equity Option” (to be renamed as “FLEX Option” as described below), “options trading,” and “underlying security” to replace references to OCC with references to a Registered Clearing Agency. The definitions of “call” and “put” would also be amended to remove unnecessary and duplicative language specifically referencing OCC.

Third, FINRA proposes conforming and clarifying amendments to the definition of “exercise price” to explicitly reference cash-settled options, including binary options and options on metrics. For cash-settled options, the proposed rule change would define “exercise price” as the price or value (measured in the applicable units (*e.g.*, amount of currency, percentage, or number)) to which the settlement value of the underlying index, security, or metric is compared to determine whether the holder is entitled to receive a dollar amount, which may be a fixed exercise settlement amount in the case of a binary option.

Finally, FINRA proposes to make other simplifying and clarifying changes to the definitions in Rule 2360(a), including to revise the defined term “FLEX Equity Option” to refer to “FLEX Option,” redesignate paragraph numbers to reflect new and consolidated definitions, and update cross-references.

Applicability

Rule 2360(b)(1) clarifies the applicability of Rule 2360. Rule 2360(b)(1) provides, among other things, that paragraphs (b)(3) through (12) of Rule 2360 apply only to standardized and conventional options on common stock. FINRA proposes to amend that provision to clarify that such limitation applies except as otherwise provided in those subparagraphs. The proposed rule change is intended to ensure that provisions within paragraphs (b)(3) through (12) that are expressly tailored to index options or binary options, such as the proposed binary options position limit and LOPR provisions discussed further below, are not limited by the

general applicability language in Rule 2360(b)(1).

Position Limits

Rule 2360(b)(3) establishes position limits for options. FINRA is not proposing substantive changes to the existing provisions governing position limits for standardized equity options, standardized index options, conventional options, and FLEX Options. FINRA proposes to add a new paragraph (b)(3)(D) to Rule 2360 specifically addressing binary options position limits. Under this proposed provision, except in highly unusual circumstances and with FINRA’s prior written approval pursuant to the Rule 9600 Series for good cause shown, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in any class of binary option if the member has reason to believe that, as a result of such transaction, the member, partner, officer, director, employee, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of the position limits established by the exchange on which the binary option trades. This proposed provision parallels the existing position limits provision applicable to standardized equity options. Thus, the proposed rule change is intended to apply substantially comparable position limit requirements to positions in binary options, consistent with FINRA’s approach to position limits for other listed options products.

FINRA also proposes conforming changes to Rule 2360(b)(6) (Liquidation of Positions and Restrictions on Access) to add references to options overlying a metric. The proposed rule change would clarify that FINRA’s existing authority relating to positions that exceed applicable position limits applies to options overlying a metric in the same manner as it applies to options overlying a security or index.

Reporting of Options Positions

Rule 2360(b)(5) sets forth requirements for reporting options positions, generally referred to as the “LOPR requirements.” Existing provisions refer to an underlying “security or index” and require a member that conducts a business in standardized options (but that is not a member of the listing exchange) to file position reports with FINRA when a reportable position threshold is reached, *i.e.*, an aggregate position of 200 or more

⁸ The proposed definition of “binary option” is derived from the definitions proposed in the exchange filings referenced in note 4, *supra*, and is drafted broadly to accommodate the various structures and terminologies used across those proposals.

⁹ Where appropriate, certain definitions have also been revised to ensure consistent reference to all three terms: “security,” “index,” and “metric.”

options contracts on the same side of the market.¹⁰ FINRA proposes to add an explicit reference to “metric” so that the reporting obligation clearly extends to options on metrics.

Additionally, exchanges have proposed reporting and aggregation conventions for the treatment of binary metric options contracts for purposes of options position reporting requirements that may differ from the conventions for other listed options.¹¹ FINRA therefore proposes to amend its rules to require a member to determine its aggregate position for standardized options in accordance with the contract equivalency conventions established by the exchange on which such standardized options are listed. FINRA believes the proposed rule change would promote consistency for market participants.

Delivery of Disclosure Documents

Rule 2360(b)(11)(A)(i) requires each member to deliver OCC’s current Options Disclosure Document (“ODD”) to each customer at or prior to the time such customer’s account is approved for trading options issued by OCC, other than an OCC Cleared OTC Option. Thereafter, a copy of each amendment to the ODD must be distributed to each customer to whom the member previously delivered the ODD not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such customer. FINRA proposes to amend Rule 2360(b)(11)(A)(i), which currently requires delivery of OCC’s disclosure document to customers approved for trading OCC-issued options. Under the proposed rule change, members would instead be required to deliver the current disclosure document of the applicable Registered Clearing Agency to customers approved for trading options issued by that Registered Clearing Agency, other than OCC Cleared OTC Options. The proposed rule change would also require delivery of amendments to such disclosure documents in a manner substantially consistent with the existing requirements applicable to OCC disclosure documents.

FINRA also proposes conforming changes to Rule 2360(b)(16)(D) (Account

Agreement) to reflect the delivery of disclosure documents issued by any Registered Clearing Agency and to require customers engaging in transactions in options issued by such Registered Clearing Agency to acknowledge receipt of the applicable disclosure document and agreement to be bound by the rules of the applicable Registered Clearing Agency.

The proposed rule change is intended to preserve the existing customer disclosure framework regardless of which Registered Clearing Agency issues or guarantees the contracts. These changes would ensure that members remain subject to substantially comparable disclosure obligations and customers receive substantially comparable disclosures regarding the characteristics and risks of standardized options.

Confirmations

FINRA Rule 2360(b)(12) requires members to provide customers with written confirmations containing specified information regarding options transactions, including the underlying security or index. FINRA proposes to amend Rule 2360(b)(12) to add a reference to an underlying “metric.” The proposed rule change clarifies the application of the existing confirmation requirements to options on metrics by requiring confirmations to identify the underlying metric, as applicable, thus ensuring that customers receive comparable information for options on metrics as they receive for other listed options products.

Transactions With Issuers

Rule 2360(b)(13) provides that no member shall enter a transaction for the sale (writing) of a call option contract for the account of any corporation which is the issuer of the underlying security thereof. FINRA proposes to amend Rule 2360(b)(13) to also encompass a corporation that is the subject of the underlying metric, thereby clarifying the rule’s application to options on metrics. FINRA believes the proposed change is appropriate to clarify that options on metrics are covered by the prohibition on selling call options for the account of an issuer given the substantially similar potential conflicts of interest that may be present for such transactions.

Other Amendments to Rule 2360

FINRA proposes conforming amendments throughout Rule 2360(b) to replace OCC-specific references with references to a Registered Clearing Agency in provisions governing rights and obligations of holders and writers

(paragraph (b)(9)), confirmations (paragraph (b)(12)), account agreements (paragraph (b)(16)(D)), violation of rules (paragraph (b)(21)), and stock transfer tax (paragraph (b)(22)).

Finally, FINRA proposes conforming and stylistic amendments to various provisions of Rule 2360 and its Supplementary Material to renumber paragraphs to reflect amended provisions, update cross-references, appropriately refer to newly defined or amended defined terms, and make various stylistic changes.

Proposed Amendments to Rule 2220

Rule 2220 governs members’ communications with the public concerning options, including provisions specific to standardized options. The existing definition of “standardized option” in Rule 2220(a)(2) refers to issuance by OCC and to the terms of the option including the amount of the underlying security. The proposed rule change would amend the definition to replace the reference to OCC with a reference to a Registered Clearing Agency, as defined in Rule 2360(a), and to add “index or metric” to the list of standardized terms alongside “underlying security.” This proposed change would clarify that the options communications requirements applicable to standardized options apply to options on metrics.

Proposed Amendments to Rules 2351 and 2357

The FINRA Rule 2350 Series establishes specific requirements for trading in index warrants, currency index warrants and currency warrants, including, among other things, account approval, suitability, communications with the public, and recordkeeping requirements. Rule 2351 provides for the general applicability of the Rule 2350 Series to these warrant products and defines specified terms used in the Rule 2350 Series, while Rule 2357 extends the Rule 2220 options communications requirements to such products. Although the Rule 2350 Series would not apply to binary metric options, FINRA is proposing two conforming changes to these rules in connection with the proposed changes to Rule 2360 described above. First, the proposed rule change would amend the cross-reference in Rule 2351 to the “control” definition in Rule 2360(a)(6) to reflect the renumbering of the paragraphs setting forth the definitions in Rule 2360(a). Second, the proposed rule change would update Rule 2357 to replace the reference to OCC with a reference to a Registered Clearing Agency.

¹⁰ Rule 2360(b)(5)(A)(i)b.

¹¹ For example, Cboe Exchange Inc. provides that, for purposes of reporting requirements, 100 binary KPI option contracts equal one standard option contract, given that binary KPI options have a multiplier of one while standard equity option contracts have a multiplier of 100. See Cboe Binary KPI Options Approval Order, *supra* note 4, 91 FR 65854, 65860.

Proposed Amendments to Rule 4210

Rule 4210(f)(2) sets forth strategy-based margin requirements for options. Various definitions in Rule 4210(f)(2)(A) contain references to OCC. FINRA proposes to replace those references with references to “the Registered Clearing Agency that guarantees the option contract” in the definitions of “aggregate discount amount,” “American-style option,” “call,” “put,” “current cash market price,” “European-style option,” “exercise settlement amount,” and “expiration date.” These changes would ensure that these definitions continue to operate appropriately where an option contract is guaranteed by a registered clearing agency other than OCC.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,¹² which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will ensure that the investor protection and market integrity requirements under FINRA’s existing rules governing options clearly and appropriately apply to all categories of exchange-listed options products. The proposed rule change is designed primarily to clarify the application of existing FINRA requirements to binary options, options on metrics, and options cleared through a registered clearing agency other than OCC—including binary metric options—and thus to preserve substantially comparable regulatory treatment for all listed options products and promote consistent application of FINRA’s options framework. Further, FINRA’s options rules apply to the options activities of all FINRA members. Clarifying the application of FINRA’s options requirements to all listed options products therefore promotes the clear and consistent application of FINRA’s options framework across all FINRA members. FINRA believes this application of its options framework

promotes just and equitable principles of trade and protects investors and the public interest.

FINRA believes the proposed amendments relating to binary options are consistent with Section 15A(b)(6) of the Act because they clarify the application of FINRA’s existing options framework to listed options with a binary payout structure. In particular, the proposed amendments are designed to ensure that FINRA members are subject to substantially comparable requirements with respect to binary options as to other types of listed options, promoting just and equitable principles of trade and protecting investors and the public interest.

FINRA believes the proposed amendments relating to standardized options cleared by a registered clearing agency other than OCC are consistent with Section 15A(b)(6) of the Act. FINRA’s existing options rules contain numerous references to OCC, reflecting the historical clearing structure for listed options. The proposed amendments are designed to ensure that FINRA’s options framework continues to operate appropriately where an option is issued or guaranteed by another registered clearing agency. By providing for substantially comparable regulatory treatment without regard to the registered clearing agency associated with a listed option, including with respect to customer disclosures and other investor protections, the proposed amendments promote consistent application of FINRA’s options requirements and protect investors and the public interest.

FINRA believes the proposed amendments relating to options overlying metrics are consistent with Section 15A(b)(6) of the Act because they clarify that FINRA’s existing options requirements apply where the underlying interest is a metric rather than an individual security’s price or index’s value. The proposed amendments are designed to ensure the application of FINRA’s existing regulatory protections, including requirements relating to position reporting, confirmations, and transactions with issuers, to options overlying metrics. FINRA believes that providing consistent regulatory treatment of options activity regardless of whether an option overlies a security, index, or metric promotes just and equitable principles of trade and protects investors and the public interest.

Finally, FINRA believes the proposed clarifying and conforming amendments are consistent with Section 15A(b)(6) of the Act. These amendments are

designed to improve the clarity, consistency, and operation of FINRA’s options rules in light of the foregoing changes, including by consolidating related definitions, updating cross-references and terminology, and making other conforming changes. FINRA believes these amendments will facilitate the clear and consistent application of FINRA’s options rules by members and thereby promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment to analyze the potential economic impacts of the proposed rule change, including anticipated costs, benefits, distributional and competitive effects, relative to the applicable baseline, and the alternatives considered in assessing how best to meet FINRA’s regulatory objectives.

Regulatory Need

As discussed above, multiple national securities exchanges have filed proposed rule changes to list and trade binary metric options, which may be cleared by a Registered Clearing Agency other than OCC, and the Commission has approved at least one such filing. Current FINRA rules governing listed options activity were developed principally around listed options that settle based on the price of an individual security or index and that clear through OCC. While FINRA intends for its options framework to apply broadly to listed options products, current rule text does not expressly address certain listed options structures, including options overlying metrics, binary options, and options cleared by a Registered Clearing Agency other than OCC. As a result, uncertainty and associated costs may arise regarding the application of existing FINRA requirements to such products. The proposed rule change would clarify that the existing rules for listed options apply broadly to all listed options products, including binary options, options on metrics, and options cleared by a Registered Clearing Agency other than OCC.

¹² 15 U.S.C. 78o–3(b)(6).

Economic Baseline

The economic baseline for this analysis is the application of FINRA's current rules in a market where exchanges have received, or may receive, Commission approval of proposed rule changes to list and trade binary metric options. Under the baseline, FINRA members considering participation in these products would need to determine how existing FINRA requirements apply to various listed options structures not expressly addressed under current rule text, including options based on metrics, binary options, and options cleared by a Registered Clearing Agency other than OCC. This uncertainty could result in additional legal, compliance, and operational costs and may delay or deter participation by some firms, potentially imposing limitations and costs on customers who seek to trade these option contracts.

Economic Benefits and Costs

The proposed rule change would affect FINRA members that currently participate, or may participate in the future, in listed options activity involving any of the options products addressed by the proposed amendments. By clarifying the application of FINRA rules to these products, the proposed rule change may reduce legal, compliance, and operational uncertainty and promote more consistent regulatory treatment across products. To the extent that exchanges introduce additional products with similar characteristics in the future, the proposed rule change may also reduce the need for subsequent conforming changes to FINRA's rules, avoiding delay and uncertainty to market participants in such circumstances.

The magnitude of these benefits depends on the extent of member participation, on their own behalf or on behalf of customers, in binary metric options products, or other products addressed by the proposed rule change, and the degree to which uncertainty under the current rules would otherwise delay or deter such activity. By clarifying the application of FINRA rules to binary options, options on metrics, and options cleared by a Registered Clearing Agency other than OCC, the proposed amendments may facilitate participation by FINRA members and may expand the range of firms through which customers can access these products to the extent that uncertainty under the current rules would otherwise have delayed or deterred such activity. Any such effect

would be incremental to the effects of an exchange's introduction of the product or changes to clearance of a product and the Commission's approval of the applicable exchange and any clearing agency proposals.

Participating firms may incur costs to update systems, supervisory procedures, training materials, account-opening processes, disclosure practices, reporting processes, and other operational controls necessary to accommodate binary metric options or other products addressed by the proposed rule change. The magnitude of these costs would vary depending on a firm's business model, existing options infrastructure, and expected level of participation in these products. Members are likely to incur the compliance and operational costs associated with the proposed amendments only where the anticipated business opportunities are deemed sufficient to justify participation in binary metric options or other options products.

Competitive and distributional effects may differ across firms based on the extent of their activities in binary metric options or other options products addressed by the proposed rule change. Members already participating in existing options markets may face lower incremental costs than firms requiring new systems or commercial arrangements to participate in options markets, and costs may vary depending on a member's role as an introducing, carrying, or clearing firm.

The economic impact and competitive and distributional effects of the proposed rule change may vary based, in part, on the extent to which the requirements applicable to FINRA members under the proposed rule change differ from the requirements applicable to members of exchanges listing options products addressed by the proposed rule change.

Alternatives

No alternatives were considered.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow FINRA to update its rules immediately consistent with developments in exchange-listed options related to binary options, including binary metric options, and options cleared by a registered clearing agency other than the OCC. This should help to ensure consistent regulatory treatment of all market participants trading binary options, including binary metric options. For these reasons, the Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ of the Act to determine whether the proposed rule should be approved or disapproved.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-FINRA-2026-022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2026-022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2026-022 and should be submitted on or before November 19, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-22027 Filed 10-28-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106730; File No. SR-NYSEAMER-2026-94]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule To Modify Pricing for the Customer Best Execution ("CUBE") Auctions

October 26, 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 October 15, 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 the NYSE American Options Fee Schedule ("Fee Schedule") to modify pricing for the Customer Best Execution ("CUBE") Auctions. The Exchange proposes to implement the fee change effective October 15, 2026. 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 purpose of this filing is to amend the Fee Schedule to modify participant rebates offered for initiating CUBE Auctions.⁴ The Exchange proposes to implement the fee change effective October 15, 2026.⁵

Background

The Exchange has established various pricing incentives designed to encourage increased electronic volume executed on the Exchange, including, but not limited to, the American Customer Engagement ("ACE") Program.⁶ To encourage participation in the ACE Program and CUBE Auctions, the Exchange offers an ACE Initiating Participant Rebate to ACE Program participants that initiate Single-Leg CUBE Auctions,⁷ Complex CUBE Auctions,⁸ and AON Single-Leg or AON Complex CUBE Auctions.⁹ Currently, the ACE Initiating Participant Rebate for each of these auctions \$0.12 per contract for all issues (*i.e.*, penny and non-penny).

In addition, the Exchange offers the Alternative Initiating Participant Rebate that enables non-ACE Program participants to qualify for this Rebate on certain initiating Complex CUBE

⁴ See generally Rules 971.1NYP and 971.2NYP and Commentaries .04 (describing the CUBE Auction, which is an electronic crossing mechanism for single-leg, complex, and AON orders with a price improvement auction on the Exchange).

⁵ The Exchange originally filed to amend the Fee Schedule on October 1, 2026 (SR-NYSEAMER-2026-91). SR-NYSEAMER-2026-91 was withdrawn on October 15, 2026 and replaced by this filing.

⁶ See Fee Schedule Sections I.E. (American Customer Engagement ("ACE") Program).

⁷ See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction), note 2. Rebate is applied to each of the first 5,000 contracts per leg of a CUBE Order executed in a CUBE Auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW, and the Rebate amount is tied to the ACE Program Tiers. This Rebate is in addition to any additional credits set forth above.

⁸ See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Complex CUBE Auction), note 2. Rebate applied to each of the first 1,000 contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW and is in addition to any additional credits set forth above.

⁹ See Fee Schedule Section I.G (CUBE Auction Fees & Credits, AON Single-Leg or AON Complex CUBE Auction), note 2. Rebate may be applied to each of the first 5,000 contracts of an AON CUBE Order executed in an AON Single-Leg CUBE auction, or the first 1,000 contracts per leg of an AON CUBE Order executed in an AON Complex CUBE auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW. The Rebate is in addition to any additional credits set forth above.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁹ 17 CFR 200.30-3(a)(12), (59).

Auctions provided they meet certain monthly volume qualification levels and increase their initiating CUBE volume.¹⁰ Currently, the Alternative Initiating Participant Rebate is \$0.12 per contract for all issues.

Another incentive program offered by the Exchange is the Professional Volume Incentive Program under which ATP Holders that achieve Electronic volume in the Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm range (*i.e.*, the “Professional Range”) are eligible to receive discounted rates on their total monthly Professional Volume and credits on their monthly Customer Electronic volume.¹¹

To encourage participation in this program and CUBE Auctions, the Exchange offers a Professional Volume Incentive Initiating Participant Rebate to program participants that initiate Single-Leg CUBE Auctions, Complex CUBE Auctions, or AON Single-Leg or AON Complex CUBE Auctions.¹² Currently, the Professional Volume Incentive Initiating Participant Rebate for each of these auctions \$0.12 per contract for all issues (*i.e.*, penny and non-penny).

Proposal

The Exchange proposes to reduce the ACE Initiating Participant Rebate for all three auctions and the Alternative Initiating Participant Rebate, for Complex CUBE Auctions, from \$0.12 per contract to \$0.115 per contract across all issues. The proposed change is the result of the Exchange’s ongoing reassessment and rebalancing of its fee structure overall and, in this instance, its CUBE rebate structure. The proposal slightly reduces the amount of the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate where applicable. As such, the Exchange believes that the Rebates will continue to encourage ATP Holders to initiate CUBE Auctions, whether single-leg, complex, or AON. Accordingly, the Exchange believes all market participants stand to benefit from the continuing increased order flow, which

promotes market depth, facilitates tighter spreads and enhances price discovery. Increased order flow promotes market depth, facilitates tighter spreads and enhances price discovery, which enhances market quality for all participants.

The Exchange also proposes to eliminate the Professional Volume Incentive Initiating Participant Rebate program for Single-leg CUBE Auctions, Complex CUBE Auctions and AON Single-Leg/AON Complex CUBE Auctions. The Exchange adopted this rebate program in an effort to attract greater liquidity to the Exchange generally and believed, therefore, that it would benefit all market participants increased order flow, which promotes market depth, facilitates tighter spreads and enhances price discovery. It was hoped that this increased order flow would improve price discovery and make the Exchange a more competitive venue for order execution, which, in turn, would improve market quality for all market participants. However, the Rebate has been underutilized and thus has not achieved its intended effect. As a result, the Exchange now proposes to eliminate it from the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁴ 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.

As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that 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.”¹⁵

There are currently 20 registered options exchanges competing for order flow. Based on publicly available information and, excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁶ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2026, the Exchange had 11.30% market share of executed volume of multiply-listed equity and ETF options order flow. In such a low concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow.

In response to these competitive forces and as discussed herein, the Exchange has established various pricing incentives regarding its CUBE Auctions, including, but not limited to, the ACE Initiating Participant Rebate, the Alternative Initiating Rebate and Professional Volume Incentive Initiating Participant Rebate, which are designed to encourage ATP Holders to utilize the CUBE Auction and to direct (increased) volume to the Exchange.

The Exchange believes that the proposed change in ACE Initiating Participant Rebate and the Alternative Initiating Rebates is reasonable, equitable, and not unfairly discriminatory and will continue to provide the intended incentive for ATP Holders to utilize the CUBE Auctions. To the extent this purpose is achieved, the Exchange believes that the proposed rebate reduction would not discourage ATP Holders from directing activity to the Exchange. The Exchange also believes that the proposal represents an equitable allocation of credits and is not unfairly discriminatory because the proposal will apply equally to all similarly situated ATP Holders.

Additionally, the Exchange believes that the elimination of the Professional Volume Incentive Initiating Participant Rebate for Single-leg CUBE Auctions, Complex CUBE Auctions and AON Single-Leg/AON Complex CUBE Auctions is reasonable, equitable, and

¹⁰ See Fee Schedule Section I.G (CUBE Auction Fees & Credits, Complex CUBE Auction), note 2, Rebate is applied to each of the first 1,000 contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW. This Rebate is in addition to any additional credits set forth above.

¹¹ See Fee Schedule, I.H. (Professional Volume Incentive).

¹² See Fee Schedule Section I.G (CUBE Auction Fees & Credits), footnote 3, the Professional Volume Incentive Initiating Participant Rebate is payable to ATP Holders that qualify for Tier B of the Professional Volume Incentive, per Section I.H., except in MXEA, MXEF, MXUSA, MXWLD, and MXACW.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁶ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

not unfairly discriminatory. Its removal would affect all similarly situated ATP Holders equally. Moreover, the program has not encouraged participants in the Professional Range to increase their participation in CUBE Auctions and eliminating this underutilized incentive program would simplify the Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed change to the ACE Initiating Participant Rebate and the Alternative Initiating Rebates would not affect intramarket competition because, as noted above, it would impact all market participants equally and, therefore, would not impose a disparate burden on competition among market participants on the Exchange. Similarly, the proposed change is designed to continue to attract order flow to the Exchange by offering ATP Holders competitive incentives to continue to direct their order flow to the Exchange, thereby increasing liquidity to the benefit of all market participants.

In addition, the Exchange believes that the proposed elimination of the Professional Volume Incentive Initiating Participant Rebate would not affect intramarket competition because, as noted above, the program has not effectively encouraged increased professional range participation, and its elimination would impact all similarly situated ATP Holders equally.

Intermarket Competition. The Exchange believes that the proposed change to the ACE Initiating Participant Rebate and the Alternative Initiating Rebates would not affect intermarket competition. As noted above, the Exchange operates in a highly competitive market in which the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. The proposed change reflects this competitive reality.

In addition, the Exchange believes that the proposed elimination of the Professional Volume Incentive Initiating Participant Rebate for Single-leg CUBE Auctions, Complex CUBE Auctions and AON Single-Leg/AON Complex CUBE Auctions would not affect intramarket competition because, as noted above, the programs have not effectively

encouraged increased Floor Broker participation, and its elimination would impact all Floor Brokers equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ 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-2026-94 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-2026-94. 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-2026-94 and should be submitted on or before November 19, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-22028 Filed 10-28-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106729; File No. SR-MX2-2026-10]

Self-Regulatory Organizations; MX2 LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.15 (Clearly Erroneous Executions)

October 26, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 19, 2026, MX2 LLC ("MX2" 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend Rule 11.15 ("Clearly Erroneous Executions") in light of the Commission's approval of Overnight Protected Bands for 23/5 Trading. The text of the proposed rule change is provided in Exhibit 5 and is available on the Exchange's website at <https://info.memxtrading.com/regulation/rules-and-filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.15 ("Clearly Erroneous Executions") in light of the Commission's approval of Overnight Protected Bands under the LULD Plan for 23/5 Trading.

Background

In conjunction with the industry's plans for the introduction of trading 23 hours a day, 5 days a week ("23/5 Trading"), the Operating Committee of the Plan to Address Extraordinary Market Volatility ("LULD Plan") filed proposed Amendment 27 to the LULD Plan, which proposed to establish price band protections during overnight trading hours ("Overnight Price Bands").⁵ The Operating Committee proposed that the Overnight Price Bands would initially be temporary static bands 20% above and below two reference points, and that after implementation, the Operating Committee would evaluate the performance of such Overnight Price Bands and propose appropriate changes

in a new plan amendment.⁶ On August 5, 2026, the Commission approved the proposal.⁷

In light of the Commission's approval of these changes to the LULD Plan, the Exchange now proposes several amendments to Rule 11.15 regarding Clearly Erroneous Executions.

In general, Rule 11.15 describes the process a market participant may use to request cancellation of a transaction that was "clearly erroneous." The current rule's central premise is that if LULD Price Bands under the LULD Plan were available and correct at the time the transaction was executed, the transaction is not eligible for clearly erroneous review. Specifically, Rule 11.15(c)(1) currently provides that "[i]f the execution time of the transaction(s) under review is during Regular Trading Hours, the transaction will not be reviewable as clearly erroneous" except in certain limited circumstances, including when (A) the transaction is in an NMS stock that is not subject to the LULD Plan (e.g., rights and warrants), (B) the transaction was executed at a time when LULD Price Bands were unavailable or trading should have been prevented due to a regulatory halt or other halt, or (C) several other limited circumstances.⁸ In approving the existing version of the rule, the Commission noted that restricting clearly erroneous review in this way during times when LULD Price Bands were in effect was "consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. . . . Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process."⁹

Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the introduction of Overnight Price Bands, the Exchange now proposes to extend the existing restrictions on clearly erroneous review

to the period when Overnight Price Bands are in place. This proposed change would be consistent with the Commission's rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.

Proposed Changes to Rule 11.15(c)(1)

To implement this change, the Exchange proposes to add several definitions to Rule 11.15(c)(1). First, the Exchange would add that the term "LULD Protected Hours" includes Regular Trading Hours and "Overnight Protected Hours" defined in Section VIII of the LULD Plan. Second, the Exchange would define "LULD Price Bands" or "Price Bands" to mean the Price Bands defined in Section V of the LULD Plan (*i.e.*, the Price Bands that apply during Regular Trading Hours) and "Overnight Price Bands" as defined in Section VIII of the LULD Plan (*i.e.*, the Price Bands that apply to the Overnight Protected Hours from 9:00 p.m. ET through 4:00 a.m. ET).

The Exchange proposes to amend the current first sentence of Rule 11.15(c)(1) to replace the phrase "Regular Trading Hours" with "LULD Protected Hours," to provide that "[i]f the execution time of the transaction(s) under review is during LULD Protected Hours, the transaction will not be reviewable as clearly erroneous" This change would extend the LULD-based restrictions on clearly erroneous review currently in place during Regular Trading Hours to the Overnight Protected Hours.

The Exchange also proposes to amend Rule 11.15(c)(1)(B)'s reference to "Percentage Parameter" to incorporate the Percentage Parameter that applies to Overnight Protected Hours. The amended provision would provide for the applicability of clearly erroneous review if the price of the transaction to buy (sell) that is the subject of the clearly erroneous complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (with respect to the Price Bands that apply during Regular Trading Hours) or the "Overnight Percentage Parameter defined in Section VIII of the LULD Plan" (with respect to Overnight Protected Hours).

In addition to these changes, the Exchange also proposes to make a non-substantive change to Rule

⁵ See Securities Exchange Act Release No. 105596 (June 1, 2026), 91 FR 33774 (June 4, 2026) (File No. 4-631) (Notice of Filing of 27th Amendment to the National Market System Plan).

⁶ See *id.*

⁷ See Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (File No. 4-631) (Order Granting Approval of the 27th Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading).

⁸ See Rule 11.15(c)(1)(A), (B), and (C).

⁹ See Securities Exchange Act Release No. 95658 (September 1, 2022), 87 FR 55060 at 55063 (September 8, 2022) (SR-ChoeBZX-2022-037) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Amend BZX Rule 11.17, Clearly Erroneous Executions).

11.15(c)(1)(A), substituting the term “LULD Plan” for the current text “the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ‘Limit Up-Limit Down Plan’ or ‘LULD Plan,’)” as the “LULD Plan” would be defined in the proposed revision to Rule 11.15(c)(1).

Proposed Changes to Rule 11.15(c)(2), (d)(3), and (f)

As noted above, current Rule 11.15(c)(1)(A) permits clearly erroneous review even during Regular Trading Hours when the transaction in question is in an NMS Stock that is not subject to the LULD Plan, *i.e.*, rights and warrants. Such transactions are reviewed for clearly erroneous status using the procedures set out in Rule 11.15(c)(2), including the Numerical Guidelines set out in the table accompanying Rule 11.15(c)(2)(A). The Exchange now proposes to introduce a similar provision regarding transactions in NMS Stocks not subject to the LULD Plan that are executed during the Overnight Protected Hours; such transactions would be subject to the same Numerical Guidelines as transactions occurring in the Pre-Market and Post-Market Sessions.

The heading of Rule 11.15(c)(2) addresses “[r]eview of transactions occurring during Pre-Market Session, Post-Market Session, or eligible for review pursuant to paragraph (c)(1)(A).” The Exchange proposes to replace the phrase “eligible for review pursuant to paragraph (c)(1)(A)” (which, in the current rule, means transactions executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan) with “during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.” This proposed language would cover transactions in NMS Stocks not subject to the LULD Plan in Regular Trading Hours and expand the same treatment to transactions executed in NMS Stocks not subject to the LULD Plan during Overnight Protected Hours. As such, the proposed change is not novel.

The Exchange proposes to make the same changes everywhere else such language appears in the rule—namely, in the text of paragraphs (c)(2)(A), (c)(2)(B), (c)(2)(C), (c)(2)(D), (d)(3), and (f).¹⁰ In each case, the Exchange

proposes to replace the phrase “eligible for review pursuant to paragraph (c)(1)(A)” with “during LULD Protected Hours in NMS Stocks not subject to the LULD Plan.”

The Exchange also proposes to make corresponding changes to the headings of the table accompanying Rule 11.15(c)(2)(A). The Exchange proposes to change the heading of the second column from “Regular Trading Hours Numerical Guidelines for transactions eligible for review pursuant to paragraph (c)(1)(A)” to “Numerical Guidelines for Transactions Executed During Regular Trading Hours in NMS Stocks Not Subject to the LULD Plan.” This change would simply replace the shorthand “eligible for review pursuant to paragraph (c)(1)(A)” with the fuller description that such transactions are “executed during Regular Trading Hours in NMS Stocks not subject to the LULD Plan,” and is not a substantive change.

Similarly, the Exchange proposes to change the heading of the third column from “Pre-Market and Post-Market Session Numerical Guidelines” to “Numerical Guidelines for Transactions Executed During the Pre-Market and Post-Market Session or During Overnight Protected Hours in NMS Stocks Not Subject to the LULD Plan.” The proposed change addresses the fact that transactions executed during Overnight Protected Hours in NMS Stocks not subject to the LULD Plan are eligible for clearly erroneous review—just as are transactions in NMS Stocks not subject to the LULD Plan executed during Regular Trading Hours—but at the Numerical Guidelines that apply outside of Regular Trading Hours.

Together, these proposed changes would extend the eligibility of clearly erroneous review for transactions in NMS Stocks not subject to the LULD Plan that is currently in place during Regular Trading Hours to the Overnight Protected Hours, and would apply the Commission’s recent approval of Overnight Price Bands to the clearly erroneous executions rule.

Implementation

The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. The Exchange proposes that this rule change would become operative at the commencement of 23/5 Trading, which is scheduled to

specifies that for transactions where clearly erroneous review is not precluded by paragraph (c)(1), an officer may initiate clearly erroneous review on his or her own motion.

commence industry-wide on December 6, 2026.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange 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, to protect investors and the public interest.

The Exchange believes that the proposed change is consistent with just and equitable principles of trade because it extends the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. Currently, LULD Price Bands are available only during Regular Trading Hours, meaning that the restrictions on clearly erroneous review described above apply only during Regular Trading Hours. With the Commission’s approval of Overnight Price Bands, the Exchange believes that extending the current restrictions on clearly erroneous review to the period when Overnight Price Bands are in place would remove impediments to and perfect the mechanism of a free and open market and a national market system by enhancing the transparency and consistency of the rule.

The resulting rule would thus extend the LULD-related limits on clearly erroneous review that are applicable in Regular Trading Hours to the overnight period. The proposed change would also be consistent with the Commission’s rationale in approving the current version of the rule because it would limit any potential discordance between the LULD mechanism and CEE review in the overnight trading session, providing greater certainty to market participants that trades executed with the Overnight Price Bands will stand and not be broken.¹³

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does believe that the proposed rule change will impose any

¹⁰ Rule 11.15(c)(2)(A)–(D) specifies general rules for applying clearly erroneous review to transactions where such review is not precluded by paragraph (c)(1). Rule 11.15(d)(3) specifies conditions where the Exchange may use a revised Reference Price for the purpose of clearly erroneous review in certain transactions where such review is not precluded by paragraph (c)(1). Rule 11.15(f)

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See 87 FR 55060 at 55063, *supra* note 10.

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather than impacting competition, the proposed change would simply extend the basic premise of the current rule that clearly erroneous review should be generally unavailable any time a transaction is executed within LULD Price Bands at a time the Price Bands were available and correct. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals, the substance of which are identical to this proposal. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MX2-2026-10 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-MX2-2026-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MX2-2026-10 and should be submitted on or before November 19, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-22025 Filed 10-28-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106732; File No. SR-IEX-2026-42]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Behavior of Discretionary Peg Orders if They Are Received by the Exchange During a Period of Quote Instability or Quote Imbalance

October 26, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 15, 2026, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to modify the behavior of Discretionary Peg orders if they are received by the Exchange during a period of quote instability or quote imbalance. The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act⁶ and paragraph (f)(6) of Rule 19b-4 thereunder.⁷

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 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.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to amend Rule 11.190(b)(10) with respect to Discretionary Peg ("D-Peg") orders, so that a D-Peg order received during a period of quote instability⁸ or quote imbalance,⁹ as selected by the User¹⁰ for that order, initially prices and posts at its resting price¹¹ rather than first pricing at the less aggressive of the Midpoint Price¹² or the order's limit price, if any. IEX also proposes to make conforming edits to Rules 11.190(a)(3), 11.190(h)(3)(C)(ii), and 11.190(h)(3)(D)(ii). This proposal will only apply to D-Peg orders with a time-in-force ("TIF")¹³ that allows the D-Peg to post to the Order Book.

Background

Currently, upon entry into the System,¹⁴ a D-Peg order seeks to execute against orders resting on the Order Book at the least aggressive of the Midpoint Price or the order's limit price, if any. If the D-Peg order has a TIF of IOC¹⁵ or FOK,¹⁶ any unexecuted shares are canceled back to the User. If the D-Peg order has a TIF of DAY,¹⁷ GTX,¹⁸ SYS,¹⁹ or GTT²⁰ (collectively referred to herein as a "bookable D-Peg order"), any unexecuted shares post to the Order Book at the less aggressive of one minimum price variant ("MPV")²¹ less aggressive than the primary quote (the NBB for a buy order or the NBO for a sell order) or the order's limit price, if any.²²

A resting D-Peg order will exercise the least amount of price discretion necessary to meet the limit price of an active contra-side order, up to its discretionary price.²³ However, during a period of quote instability or quote imbalance, as applicable, the D-Peg order will not exercise any discretion and is only eligible to trade at its resting price.²⁴ Quote instability determinations are made by the System using the "crumbling quote indicator" or "CQI",²⁵ and periods of quote imbalance are determined by the System using the "quote imbalance indicator" or "QII".²⁶ Users designate whether the CQI or QII should apply to each D-Peg order, which means each resting D-Peg order's discretion will always be restricted either during times of quote instability or quote imbalance, as specified by the User,²⁷ while an incoming D-Peg order currently is unaffected by whether it is received during a period of quote instability or quote imbalance, as described above.

Proposal

The Exchange proposes to extend the CQI and QII protections to incoming bookable D-Peg orders that arrive while the applicable quote instability or quote imbalance determination is in effect for its side of the market.

As proposed, an incoming bookable D-Peg order will not seek to execute against orders resting on the Order Book at the least aggressive of the Midpoint Price or the order's limit price, if any, if it arrives during a period of quote instability or quote imbalance, as applicable. Instead, under this proposal, such a D-Peg order will post to the Order Book at either the less aggressive of one MPV less aggressive than the primary quote, or the order's limit price, if any. When on entry the CQI or QII, as applicable, is not in effect, a bookable D-Peg order will, as is currently the case, seek to execute against orders resting on the Order Book at the least aggressive of the Midpoint Price or the order's limit price, if any, and any unexecuted shares will post to the Order Book at either the less aggressive of one MPV less aggressive than the primary quote, or the order's limit price, if any. The Exchange is not proposing any change to the behavior of non-bookable D-Peg orders (*i.e.*, orders with a TIF of IOC or FOK), which will continue to seek to execute against orders resting on

the Order Book at the least aggressive of the Midpoint Price or the order's limit price, if any, irrespective of if they arrive during a period of quote instability or quote imbalance, as applicable.

This proposal also changes nothing about the behavior of resting D-Peg orders, which will continue to exercise the least amount of price discretion necessary to meet the limit price of an active contra-side order, up to the D-Peg order's discretionary price, when the CQI or QII, as applicable, is not in effect. However, during a period of quote instability or quote imbalance, as applicable, resting D-Peg orders will continue to not exercise any price discretion, meaning they remain eligible to trade only at their resting price.²⁸

The following examples depict how this proposed change will impact incoming D-Peg orders:

Example 1 (existing functionality)

- Market for security ABC is \$10.10 by \$10.12.
- IEX has a resting M-Peg²⁹ to sell 100 shares, which is booked at the Midpoint Price of \$10.11.
- CQI determines the Signal Best Bid³⁰ is unstable.
- IEX receives a D-Peg order to buy 100 shares with limit of \$10.11, TIF of DAY, and User designation that the D-Peg should apply the CQI.
- D-Peg order is automatically priced at \$10.11 and takes the resting M-Peg, irrespective of the quote being unstable.

Example 2 (proposed functionality)

- Market for security ABC is \$10.10 by \$10.12.
- IEX has a resting M-Peg³¹ to sell 100 shares, which is booked at the Midpoint Price of \$10.11.
- CQI determines the Signal Best Bid is unstable.
- IEX receives a D-Peg order to buy 100 shares with limit of \$10.11, TIF of DAY, and User designation that the D-Peg should apply the CQI.
- D-Peg order is automatically priced at \$10.09 and does not trade with the resting M-Peg.

This proposal merely aligns the entry pricing of a bookable D-Peg order with the order's existing restriction on exercising price discretion during a period of quote instability or quote imbalance, as applicable. The proposed change is confined to this entry-pricing circumstance for bookable D-Peg orders. It does not change how the Exchange calculates quote instability or quote

⁸ See IEX Rule 11.190(g)(1).

⁹ See IEX Rule 11.190(g)(2).

¹⁰ See Rule 1.160(qq).

¹¹ The resting price for a D-Peg order is the less aggressive of one (1) minimum price variant less aggressive than the primary quote (*i.e.*, the NBB for buy orders and NBO for sell orders) or the order's limit price, if any. See Rule 11.190(b)(10).

¹² See Rule 1.160(t).

¹³ See Rule 11.190(c).

¹⁴ See Rule 1.160(nn).

¹⁵ See Rule 11.190(c)(1).

¹⁶ See Rule 11.190(c)(2).

¹⁷ See Rule 11.190(c)(3).

¹⁸ See Rule 11.190(c)(4).

¹⁹ See Rule 11.190(c)(5).

²⁰ See Rule 11.190(c)(6).

²¹ See Rule 11.210.

²² See Rule 11.190(b)(10).

²³ A D-Peg order's discretionary price is the less aggressive of the Midpoint Price or the D-Peg order's limit price, if any.

²⁴ See Rule 11.190(b)(10)(K).

²⁵ See Rule 11.190(g)(1).

²⁶ See Rule 11.190(g)(2).

²⁷ See Rule 11.190(b)(10).

²⁸ See Rule 11.190(b)(10)(K).

²⁹ See Rule 11.190(b)(9).

³⁰ See Rule 11.190(g)(1)(B)(i).

³¹ See Rule 11.190(b)(9).

imbalance, the resting price formula, or the order's discretionary price when the selected determination is not in effect.

Finally, the Exchange proposes two conforming changes to Rule 11.190(h)(3)³² to clarify that a bookable D-Peg order will not execute on entry in a locked or crossed market if the CQI or QII, as applicable, is in effect. Under current rules, incoming bookable D-Peg orders could execute on entry in a locked or crossed market regardless of the CQI or QII state.

To implement the change, the Exchange proposes to revise the introductory text of Rule 11.190(b)(10), as well as references to D-Peg pricing on entry in Rules 11.190(a)(3), 11.190(h)(3)(C)(ii), and 11.190(h)(3)(D)(ii). Specifically, IEX proposes to make the following changes:

- In the explanatory paragraph in Rule 11.190(b)(10), insert a new sentence after the sentence that reads: "A pegged order that upon entry into the System, the price of the order is automatically adjusted by the System to be equal to the less aggressive of the Midpoint Price or the order's limit price, if any." The new sentence will read in full:

- "However, if the order is submitted with a TIF of DAY, GTX, SYS, or GTT, and is received during a period of quote instability as defined in paragraph (g)(1) or a period of quote imbalance as defined in paragraph (g)(2) below, as selected by the User, the price of the order is automatically adjusted by the System to be equal to and ranked at the less aggressive of one (1) MPV less aggressive than the primary quote (*i.e.*, the NBB for buy orders and NBO for sell orders) or the order's limit price, if any, and posts to the Order Book."

- In the explanatory paragraph in Rule 11.190(a)(3) (Pegged Order), in the section describing D-Peg order pricing, add the following language after the words "the midpoint of the NBBO upon entry":

- "(except during periods of quote instability as defined in paragraph (g)(1) or during periods of quote imbalance as defined in paragraph (g)(2) below, as selected by the User), one (1) MPV less aggressive than the primary quote (*i.e.*, the NBB for buy orders and NBO for sell orders)"

- IEX also proposes to remove the words "the inside quote on the same side of the market" that currently follow the proposed new text in Rule 11.190(a)(3), to address an inconsistency in Rule 11.190(a)(3)'s description of D-Peg's resting price.³³

³² Rule 11.190(h)(3)(C)(ii) describes how in a locked market, D-Peg (and P-Peg) orders are priced one MPV less aggressive than the locking price. Rule 11.190(h)(3)(D)(ii) describes how in a crossed market, D-Peg (and P-Peg) orders are priced one MPV less aggressive than the crossing price (the lowest Protected Offer for buy orders and the highest Protected Bid for sell orders).

³³ IEX's D-Peg rule, Rule 11.190(b)(10), correctly describes the resting price of a D-Peg order, but the Pegged Order rule's description of the D-Peg resting price is inconsistent with the D-Peg rule. This conforming edit addresses the inconsistency.

- In Rule 11.190(h)(3)(C)(ii), which describes D-Peg price sliding in the event that the market becomes locked, add the following text to the last sentence, after it describes how a D-Peg order tries to execute at the Midpoint Price if it is submitted while the market is locked:

- "unless the order is submitted with a TIF of DAY, GTX, SYS, or GTT, and is received during a period of quote instability as defined in paragraph (g)(1) or a period of quote imbalance as defined in paragraph (g)(2) below, as selected by the User."

- In Rule 11.190(h)(3)(D)(ii), which describes D-Peg and P-Peg³⁴ price sliding in the event that the market becomes crossed, add the following text to the second sentence, after it describes how a D-Peg order tries to execute at the crossing price if it is submitted while the market is crossed:

- "unless the order is submitted with a TIF of DAY, GTX, SYS, or GTT, and is received during a period of quote instability as defined in paragraph (g)(1) or a period of quote imbalance as defined in paragraph (g)(2) below, as selected by the User."

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trading Alert at least ten days in advance of such implementation date and within 90 days of effectiveness of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)³⁵ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act³⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest because it is designed to protect from adverse selection bookable D-Peg orders that arrive during periods of quote instability or quote imbalance, by limiting execution at the Midpoint Price when the Exchange's CQI or QII, as applicable, identifies that the primary quote appears to be moving adversely to them, thereby reducing the potential to execute at an imminently stale price and enhancing the overall execution experience of D-Peg orders.

In addition, the Exchange believes that the proposed rule change will make D-Peg order handling more consistent and predictable, by extending the

protection from execution at a potentially imminently stale price to bookable D-Peg orders on entry. Under the existing rule, an incoming D-Peg order received during a period of quote instability or quote imbalance, as applicable, is eligible to execute against resting interest up to the Midpoint Price on entry (unless constrained by the order's limit price), even though a resting D-Peg order is restricted from exercising price discretion to the Midpoint Price during such times.

Further, the Exchange believes that such protection is consistent with the protection of investors and the public interest because it may incentivize the entry of additional D-Peg orders on the Exchange, thereby increasing the overall liquidity profile on the Exchange to the benefit of all market participants. Moreover, resting D-Peg orders generally provide liquidity to market participants removing liquidity on the Exchange when the CQI or QII, as applicable, is not in effect. By incentivizing the entry of additional D-Peg orders, the Exchange believes that the proposed changes may enhance the overall execution experience for other market participants removing liquidity on the Exchange when the CQI or QII, as applicable, is not in effect.

Furthermore, as noted in the Purpose section, the proposed pricing for a bookable D-Peg order that arrives during a period of quote instability or quote imbalance, as applicable, is the same as the pricing that occurs if any incoming bookable D-Peg order does not fully execute on entry. Thus, IEX does not believe that the proposed changes raise any new or novel issues that have not already been considered by the Commission in connection with existing order types and functionality offered by the Exchange.

Additionally, IEX believes that updating the descriptions of how orders are repriced in the Pegged Order rule, as well as in the rules for handling incoming D-Peg orders when the market is locked or crossed, is consistent with the protection of investors and the public interest because it is designed to reduce the potential to execute at an imminently stale price and thereby enhance the overall execution experience of D-Peg orders.

Finally, the Exchange believes that the conforming change to the description of the resting price of D-Peg orders in the Pegged Orders rule is consistent with the protection of investors and the public interest because it adds additional clarity to the Exchange's rules, thereby making them more accurate and complete, and

³⁴ See Rule 11.190(b)(8).

³⁵ 15 U.S.C. 78f.

³⁶ 15 U.S.C. 78f(b)(5).

descriptive of the System's functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposal would impose an unnecessary or undue burden on intermarket competition. Market participants may choose among competing venues and order types. The proposal refines the handling of an existing IEX order type in a limited set of circumstances, in a manner designed to reduce the potential to execute at an imminently stale price and thereby enhance the overall execution experience of D-Peg orders which may help the Exchange compete with other exchanges for order flow. This order handling change will be available to all Members³⁷ on equal terms. Further, market participants have a variety of order types to select from (on IEX as well as on other equities exchanges) and have the ability to choose among these various order types to meet their specific trading or business needs, as determined by the Members. Accordingly, the Exchange believes that the proposed rule change will not result in any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange also does not believe the proposal would impose an unnecessary or undue burden on intramarket competition. The proposed change will modify the treatment of all bookable D-Peg orders that are received by the Exchange during a period of quote instability or quote imbalance, as applicable, and will therefore be applied equally to all Members using the D-Peg order type, and the proposal does not alter the treatment of other order types.

Moreover, as discussed in the Statutory Basis sections, resting D-Peg orders generally provide liquidity to market participants removing liquidity on the Exchange. Thus, the Exchange further believes that to the extent that the proposed changes incentivize additional D-Peg order flow, for the reasons discussed in the Statutory Basis section, the proposed order handling change will enhance competition in a manner that is consistent with the protection of investors and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)³⁸ of the Act and Rule 19b-4(f)(6)³⁹ thereunder. 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4⁴⁰ because it would not significantly affect the protection of investors or the public interest because it merely extends a bookable D-Peg order's existing restriction on discretionary pricing during periods of quote instability or quote imbalance, as applicable, to the order's initial pricing on entry. The rule change proposal does not alter the CQI or QII calculations, the order's resting price, or its ability to exercise discretion outside of periods of quote instability or quote imbalance, as applicable. Further, as discussed in the Burden on Competition section, above, this proposal would not impose any significant burden on competition. Furthermore, 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.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

under Section 19(b)(2)(B)⁴¹ 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-IEX-2026-42 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-IEX-2026-42. 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-IEX-2026-42 and should be submitted on or before November 19, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-22030 Filed 10-28-26; 8:45 am]

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³⁸ 15 U.S.C. 78s(b)(3)(A).

³⁹ 17 CFR 240.19b-4(f)(6).

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ 15 U.S.C. 78s(b)(2)(B).

⁴² 17 CFR 200.30-3(a)(12).

³⁷ See Rule 1.160(s).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106739; File No. SR–CBOE–2026–082]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove the Silexx Fees From Its Fee Schedule in Accordance With SEC Exemptive Relief

October 26, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 15, 2026, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (“Cboe” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to remove the Silexx fees from its Fee Schedule in accordance with SEC exemptive relief issued on May 1, 2026. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/options/regulation/rule_filings/cone/), and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the Silexx Fee Schedule in its entirety pursuant to exemptive relief granted from the Commission.³

By way of background, the Exchange’s affiliate, Cboe Silexx, LLC, offers Silexx (an order entry management system or “OEMS”). Silexx is deemed a “facility” of the Exchange as that term is defined in Section 3(a)(2) of the Exchange Act.⁴ Silexx allows authorized Users with direct access to the Exchange to establish connectivity and submit orders directly to the Exchange. Silexx Users may also send orders to other exchanges and are not required to send orders to the Exchange in order to use Silexx. Furthermore, TPHs are not required to use Silexx in order to access the Exchange; TPHs may also use an OEMS supported by a third-party to enter and route orders for execution to the Exchange and manage such executions.

As a facility of the Exchange, Silexx must satisfy the regulatory requirements applicable to a national securities exchange, including certain rule filing requirements under Section 19(b) and the requirements under Section 6(b) of the Exchange Act.⁵ In compliance with these requirements, the Exchange has filed numerous proposed rule changes on behalf of Silexx.⁶ On May 1, 2026, the Securities and Exchange Commission (the “Commission” or the “SEC”) granted conditional exemptive

relief pursuant to its authority under Section 36(a)(1) of the Exchange Act⁷ to the Exchange for Exchange-Affiliated OEMSs (including Silexx) from the rule filing requirements under Section 19(b) of the Exchange Act and the requirements under Section 6(b) of the Exchange Act (the “Exemptive Relief”).⁸ Meaning, that so long as the Exchange meets the conditions set out in the Exemptive Relief with respect to an Exchange-Affiliated OEMS, including Silexx, the Exchange (i) need not abide by the rule filing requirements under the Exemptive Relief pursuant to Section 19(b) and (ii) is not required to operate in accordance with Section 6(b) of the Exchange Act with respect to that Exchange-Affiliated OEMS, such as the requirement that fees are not unfairly discriminatory (under 6(b)(4)) or that fees do not impose an undue burden on competition (under 6(b)(8)).

In particular, the Exemptive Relief specifies that the following conditions must be met with respect to an Exchange-Affiliated OEMS, including Silexx, in order for the Exchange to benefit from this relief:

(i) The use of the Exchange-Affiliated OEMS is voluntary (*i.e.*, solely within the discretion of an Exchange member or other user of the OEMS) and not required for an Exchange member to access the Exchange.

(ii) There will be no differences between how third-party and Exchange-Affiliated OEMSs may connect to the Exchange.

(iii) The Exchange-Affiliated OEMS (or the entity that owns the Exchange-Affiliated OEMS) is not a registered broker-dealer.

(iv) For any order ultimately routed to the Exchange via an Exchange-Affiliated OEMS, the users of such OEMS and their brokers are solely responsible for routing decisions (*i.e.*, the Exchange is not involved in such routing decisions). All orders received by the Exchange from a third-party or Exchange-Affiliated OEMS shall be processed by the Exchange in the same manner and pursuant to the Exchange’s rules.

(v) Any fees charged by the Exchange-Affiliated OEMS to a user thereof must not take into consideration any of that user’s Exchange activity or Exchange fees set forth on the Exchange’s fee schedule.

(vi) Users of third-party OEMSs and Exchange-Affiliated OEMSs will have use of the Exchange facilities and services (*e.g.*, Exchange market data) in the same manner pursuant to the same terms, conditions, and fees as set forth

³ See Securities Exchange Act Release No. 105351 (May 1, 2026), 91 FR 24631 (May 6, 2026) (Order Granting Conditional Exemptive Relief Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 from Rule Filing Requirements under Section 19(b) of the Exchange Act and Requirements under Section 6(b) of the Exchange Act for Order and Execution Management Systems).

⁴ See Securities Exchange Act Release No. 101491 (Oct. 31, 2024), 89 FR 88080 (Nov. 6, 2024). Section 3(a)(2) of the Exchange Act states: The term “facility” when used with respect to an exchange includes its premises, tangible or intangible property whether on the property or not, any right to use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. 15 U.S.C. 78c(a)(2).

⁵ 15 U.S.C. 78s(b) and 78f(b).

⁶ See, *e.g.*, Securities Exchange Act Release Nos. 83266 (May 14, 2018), 83 FR 23310 (May 18, 2018) (SR–CBOE–2018–035); 87028 (Sept. 19, 2019), 84 FR 50529 (Sept. 25, 2019) (SR–CBOE–2025–061); 89285 (July 10, 2020), 85 FR 43284 (July 16, 2020) (SR–CBOE–2020–062); 90929 (Jan. 14, 2021), 86 FR 6705 (Jan. 22, 2021) (SR–CBOE–2021–002); 99111 (Dec. 7, 2023), 88 FR 86411 (Dec. 13, 2023) (SR–CBOE–2023–064).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁷ 15 U.S.C. 78mm(a)(1).

⁸ 15 U.S.C. 78s(b) and 78f(b).

in the Exchange's Rules, technical specifications, and Fees Schedule.

(vii) The Exchange has established and maintains procedures and internal controls reasonably designed to prevent the Exchange-Affiliated OEMS from receiving any advantage or benefit as a result of its affiliation/relationship with the Exchange, including the provision of Exchange information to the entity or personnel operating the Exchange-Affiliated OEMS regarding updates to the Exchange trading system (such as technical specifications) until such information is available generally to similarly situated market participants.

Importantly, in compliance with the terms of the Exemptive Relief, the Exchange has established and maintains procedures and internal controls reasonably designed to ensure compliance with the terms of the Exemptive Relief. Based on the Exemptive Relief, with respect to Exchange-Affiliated OEMSs, including Silexx, the Exchange is no longer required to undergo the rule filing process and is not required to operate in accordance with Section 6(b) obligations which, among other items, requires that fees are not unfairly discriminatory and, as such, the Exchange may consider having different pricing for its customers.

Accordingly, the Exchange proposes to remove the Silexx Fee Schedule in its entirety. Going forward, fees will be established as part of a contract, as opposed to residing within the Exchange's Fee Schedule. To avoid confusion between having pricing within a customer's contract and potentially differing prices within the Silexx Fee Schedule, the Exchange proposes to remove this Fee Schedule from its website and notes that these fees are no longer applicable—instead, customers will be bound by the fees within their contracts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, the Exchange believes the proposed rule change is consistent with the Exemptive Relief granted by the Commission with respect to Exchange-Affiliated OEMSs, including Silexx. The purpose of this filing is to implement the Exemptive Relief. With respect to Exchange-Affiliated OEMSs, including Silexx, the Exchange is not required to comply with Section 6(b) obligations, such as the Section 6(b)(5)⁹ requirement that the rules of an exchange not be

designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as well as Section 6(b)(4)¹⁰ as it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

By removing Silexx fees from its Fee Schedule, the Exchange provides clarity for Silexx Users as they will be bound by the pricing within their contract, as opposed to an online fee schedule. As such, removing potentially conflicting fees prevents confusion between stale online fees and fees within a contract. This is consistent with the Exemptive Relief, which permits fees charged by an Exchange-Affiliated OEMS to be competitively established and to vary among users of such Exchange-Affiliated OEMS.

While the Exchange may consider charging Silexx Users different fees, this is in compliance with its Exemptive Relief. In the Exemptive Relief, the Commission explicitly notes that, "fees charged by an Exchange-Affiliated OEMS may be competitively established and may vary among users of such Exchange-Affiliated OEMS."¹¹ While pricing may vary between Silexx Users, this is permitted under the Exemptive Relief received.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket and intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The purpose of this filing is to implement the Exemptive Relief with respect to Exchange-Affiliated OEMSs, including Silexx. The Exchange's removal of the Silexx fees from the Silexx Fee Schedule is consistent with the Exemptive Relief granted by the Commission, which permits fees charged by an Exchange-Affiliated OEMS to be established competitively and vary among users.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-082 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-CBOE-2026-082. 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-CBOE-2026-082 and should be submitted on or before November 19, 2026.

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See *supra* note 3.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–22029 Filed 10–28–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106738; File No. SR–ICC–2026–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICE Clear Credit Recovery Plan and ICE Clear Credit Wind-Down Plan

October 26, 2026.

I. Introduction

On August 27, 2026, ICE Clear Credit LLC (“ICC” or “ICE Clear Credit”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or the “Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change (the “Proposed Rule Change”) to revise the ICC Recovery Plan (the “Recovery Plan”) and the ICC Wind-Down Plan (the “Wind-Down Plan”) (collectively, the “Plans”) to reflect changes that impacted ICC in the past year and to accommodate ICC’s U.S. Treasury clearing service (the “Treasury Clearing Service”). The proposed rule change was published for comment in the *Federal Register* on September 14, 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

A. Background

ICC is registered with the Commission as a clearing agency for the purpose of clearing covered default swap (“CDS”) contracts and for transactions involving U.S. Treasury securities. ⁴ ICC is a central counterparty (“CCP”), which means that it interposes itself as the buyer to every seller and the seller to

every buyer for transactions in CDS contracts and U.S. Treasury securities. ⁵ Because it acts as a CCP, ICC is a “covered clearing agency” as defined in Rule 17ad–22(a). ⁶ As such, ICC is regulatorily obligated to have plans for (i) recovery, which must address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes, as necessary to maintain its viability as a going concern and to continue its provision of core services and (ii) wind-down, which encompasses actions to effect the permanent cessation, sale, or transfer of one or more of its core services. ⁷

ICC proposes to make changes to the Plans, which include the policies and procedures that ICC uses to govern its recovery and wind-down. ⁸ ICC has stated that the Proposed Rule Change amends the Plans to reflect changes that impacted ICC in the past year, including its expansion of clearance and settlement services to cover U.S. Treasury securities as part of its new Treasury clearing service. ⁹ ICC further stated that the Proposed Rule Change would update and revise the Plans for clarity and streamlining purposes, and to ensure that the information provided is current. ¹⁰

⁵ Rule 17ad–22(a) defines “central counterparty” as “a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.” 17 CFR 240.17ad–22(a).

⁶ Rule 17ad–22(a) defines “covered clearing agency” as a “registered clearing agency that provides the services of a central counterparty or central securities depository.” 17 CFR 240.17ad–22(a).

⁷ Rule 17ad–22(e)(3)(ii) requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. 17 CFR 240.17ad–22(e)(3)(ii). Further, Rule 17ad–26(b) defines “orderly wind-down” as “the actions of a covered clearing agency to effect the permanent cessation, sale, or transfer of one or more of its core services . . . in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.” 17 CFR 240.17ad–26.

⁸ ICC’s Recovery Plan and Wind-Down Plan are contained in Confidential Exhibits 3 and 5, respectively, of SR–ICC–2026–009. *See generally* Notice, 91 FR 58208.

⁹ *See* Notice, 91 FR at 58208, 58212. *See also* Securities Exchange Act Release No. 104762 (Jan. 30, 2026), 91 FR 5528 (Feb. 2, 2026) (File No. 600–45), granting ICC’s application to register as a clearing agency to provide CCP services for transactions involving U.S. Treasury securities.

¹⁰ *See* Notice, 91 FR at 58208, 58212.

B. Proposed Changes Common to Both Plans

In general, ICC proposes to incorporate references to the Treasury clearing service throughout the Plans and distinguish between the Treasury and CDS clearing services, where applicable. As proposed, both Plans would clarify that the information provided in the amended documents is current as of March 6, 2026, unless otherwise stated. ICC also proposes to add a footnote stating that the Treasury clearing service has not yet launched, while incorporating Treasury clearing service-specific information throughout the Plans that is based on the anticipated launch of the service.

ICC proposes to update the terminology referencing its members. Under the proposal, ICC Clearing Participants (“Clearing Participants” or “CPs”) would refer to members in the CDS clearing service and ICC Treasury Participants (“Treasury Participants” or “TPs”) would refer to members in the Treasury clearing service. These changes in terminology, as well as references to the CDS Rules versus the Treasury Rules, would be extended throughout the Plans.

ICC proposes to update language in the Plans about its role and scope of critical operation; its financial resources in case of a member default; and its stress scenarios. ICC proposes to insert a description of its role as a CCP for the Treasury clearing service, as well as additional language about its original founding as a CCP for the CDS market. ICC states that these brief descriptions would distinguish its existing CDS clearing services and approvals from its recently approved Treasury clearing services and planned Treasury clearing activities. ¹¹ The current Plans describe ICC’s CDS clearing services as its sole critical operation. However, to accommodate the inclusion of the recent Treasury clearing service, ICC proposes revisions to clarify that “clearing services,” broadly, are its sole critical operation. Additionally, ICC proposes to use the terms “General Guaranty Fund” for the CDS clearing service and “Treasury Guaranty Fund” for the Treasury clearing service. Although stress scenarios are and would continue to be listed in both Plans, ICC proposes to incorporate references to the Treasury clearing service and distinguishing between the Treasury and CDS clearing services, where applicable. ICC further proposes to specify in both Plans that it ensures that it is in compliance with all

¹¹ *See* Notice, 91 FR at 58209, 58212.

¹⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 106308 (Sept. 9, 2026), 91 FR 58208 (Sept. 14, 2026) (File No. SR–ICC–2026–009) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Plans, ICC’s CDS Rules, or Treasury Clearing Rules, as applicable.

regulatory capital requirements at the entity level.

Across the Plans, ICC proposes to remove references to withdrawn regulatory guidance.¹² ICC states that, despite this regulatory withdrawal, it would continue to consider the principles underlying such guidance in its recovery planning.¹³ As such, ICC proposes to replace references to such guidance with references to “industry best practices.”

Regarding governance structure, ICC proposes to amend the Plans to reflect that ICC has a board-level Board Risk Committee¹⁴ by revising the existing governance chart to include the Board Risk Committee and to include a new subsection describing the role and responsibilities of the Board Risk Committee. This governance chart likewise would incorporate Treasury clearing service-specific committees and groups,¹⁵ and new language would describe their roles and responsibilities. ICC proposes additional language describing required prior consultation with the Treasury Risk Committee as to certain Specified Actions,¹⁶ including certain matters relating to the acceptance for clearing of Treasury transactions, modifications to the Treasury Rules relating to margin and the Treasury Guaranty Fund, as well as certain recovery-related matters such as commencing reduced gain distribution or implementing full clearing service termination. For consistency with CDS and Treasury Rules, ICC also proposes a clarifying edit to provide that a majority of each Risk Committee constitutes a quorum for doing business. ICC further proposes to update terminology throughout the Plans to distinguish between the CDS and Treasury clearing services, including references to the CDS Risk Committee versus the Treasury Risk Committee.

With regard to the annual review process for the Recovery Plan and Wind-Down Plan, the current language specifies that the annual review and material amendments are presented to

the Risk Committee,¹⁷ which then makes a recommendation to the Board regarding their approval. However, under the Proposed Rule Change, this review and any material amendments instead would be presented to the Board Risk Committee, who would then make a recommendation to the Board regarding their approval. As proposed, the CDS and Treasury Risk Committees would continue to review material matters impacting the Recovery Plan and the Wind-Down Plan but would no longer be required to conduct a separate review solely in connection with each Plan.¹⁸ ICC proposes to specify that the results of testing of the Recovery Plan and the Wind-Down Plan will be provided to the Treasury Risk Committee and Board Risk Committee, in addition to the CDS Risk Committee and Board.

ICC proposes to update the relevant agreement governing certain services in the list of critical services provided to ICC by affiliates shown in each Plan. Similar to the existing identification of core services for the CDS clearing service, ICC proposes to include in the Plans the core services for the Treasury clearing service, including the acceptance of new trades, management of positions, production of risk and banking reports, and movement of funds. Regarding staffing considerations and specifically as to the roles necessary to support the core services on a daily basis and in the event of recovery or wind-down, ICC proposes to state that, in general, all staff in a functional area provide support for all cleared products and markets at ICC and personnel are not split between the CDS and Treasury clearing services. ICC also proposes to clarify that ICC separately holds the dedicated funds used to meet financial resources requirements for the CDS clearing service from the Treasury clearing service.

The remaining changes proposed to the Recovery Plan and the Wind-Down Plan would renumber subsections, correct typographical errors, and update relevant information to ensure that it is current and accurate. For example, such changes would include a list of Clearing

Participants;¹⁹ updated financials;²⁰ identification of ICC’s counterparties and contractual agreements;²¹ changes in contact information for relevant regulatory staff;²² projected estimated recovery and wind-down costs and financial resources to support wind-down;²³ and updated stress scenario analyses.²⁴

C. Proposed Changes Specific to the Recovery Plan

ICC proposes to amend its Recovery Plan, the purpose of which is to describe the actions and steps that would be taken to restore ICC to a stable and sustainable condition in the event that it came under severe stress; and to maintain effective arrangements for ensuring losses that threaten ICC’s viability as a going concern are allocated.

In addition to the above common changes to both Plans, ICC proposes to make conforming changes in Section IV., which provides an overview of key recovery elements. ICC proposes to align language about membership qualifications with that found in the CDS Rules and Treasury Rules. ICC proposes to replace “must” with “may” in the Recovery Plan for consistency with CDS Rule 201(c), which states that “the following categories of persons *may* be approved by ICE Clear Credit as Participants” before listing the categories.²⁵ As amended, the language in the Recovery Plan would state that an entity “*may* be one of the following” to qualify as a Clearing Participant. Similarly, ICC proposes to amend language in the Recovery Plan and add a corresponding footnote to align with recently revised Treasury Rule 201(c),²⁶ which states that to qualify as a Treasury Participant for the Treasury clearing service, an entity may be one of the following: registered broker-dealer,

¹⁹ Recovery Plan, Sec. IV.B.; Wind-Down Plan, Sec. IV.A. See Notice, 91 FR at 58211, 58214.

²⁰ Recovery Plan, Sec. VIII.B.; Wind-Down Plan, Sec. VII. See Notice, 91 FR at 58211–212, 58214.

²¹ Recovery Plan, Sec. VI.B.-C.; Wind-Down Plan, Sec. VII.D, VIII. See Notice, 91 FR at 58211, 58214.

²² Recovery Plan, Sec. VII.B.; Wind-Down Plan, Sec. VI.A. *Id.*

²³ Recovery Plan, Sec. X.; Wind-Down Plan, Sec. IX. See Notice, 91 FR at 58212, 58214.

²⁴ Sections XIII of the Recovery Plan and Section XI.D. of the Wind-Down Plan. *Id.* For a full list of non-substantive changes, see Notice, 91 FR at 58211–212, 58214.

²⁵ See CDS Rule 201(c) (emphasis added), available at https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf.

²⁶ See generally Securities Exchange Act Release No. 105986 (July 24, 2026), 91 FR 47864 (July 29, 2026) (File No. SR-ICC-2026-009) (approving the clarification that futures commission merchants and registered clearing agencies be added to the list of entities that ICC may approve to be Treasury Participants).

¹² See Commodity Futures Trading Commission, Press Release No. 9120–25 (September 11, 2025), available at <https://www.cftc.gov/PressRoom/PressReleases/9120-25>.

¹³ See Notice, 91 FR at 58209.

¹⁴ See generally Securities Exchange Act Release No. 103161 (May 30, 2025), 90 FR 23970 (June 5, 2025) (File No. SR-ICC-2025-006).

¹⁵ These groups and committees would include the Treasury Risk Committee, Treasury Operations Working Group, and the Treasury Risk Working Group. See Notice, 91 FR at 58210. In a footnote, ICC proposes to explain that such Treasury clearing service-specific working groups and committees have not yet been formed and may be convened at the direction of ICC management in connection with the launch of the Treasury clearing service. *Id.*

¹⁶ See Treasury Rule 502.

¹⁷ Currently, this reference pertains to the CDS Risk Committee because ICC has yet to establish a Treasury Risk Committee. See Notice, 91 FR at 58211, n. 28.

¹⁸ ICC states that these changes aim to streamline the CDS and Treasury Risk Committees’ review processes and remove the potential for duplicate reviews. See Notice, 91 FR at 58211. However, specifically as to the Recovery Plan, ICC proposes to add details about ICC’s testing of the Recovery Plan, and to state that ICC may determine to conduct this Recovery Plan testing separately or together for the CDS and Treasury clearing services. See Notice, 91 FR at 58211.

registered investment company, bank, insurance company, futures commission merchant, registered clearing agency, or an entity which may not fall within the above categories, as designated appropriate by the SEC. ICC further proposes to incorporate information into the Recovery plan about participation in the Treasury clearing service in accordance with its Treasury Rules.

ICC further proposes to amend Section IV. regarding operational capacity, financial responsibility and capital requirements, funding requirements, and collateral management. Under the Proposed Rule Change, the Recovery Plan would state that the CDS and Treasury clearing services operate separately in terms of financial resources. Specifically, the Recovery Plan would state that the CDS clearing service maintains a separate General Guaranty Fund and calls for and holds margin payments from Clearing Participants independently of margin payments called for in connection with the Treasury clearing service. Similarly, regarding collateral management, ICC proposes to specify that the Treasury clearing service determines its liquidity needs separately from the CDS clearing service and maintains separate liquidity resources. ICC proposes to state the eligible forms of collateral for Initial Margin and Treasury Guaranty Fund contributions for the Treasury clearing service as of March 6, 2026, in accordance with Treasury Rule 401 and Schedule 401 to the Treasury Rules.

Additionally in Section IV., ICC proposes to remove references to “direct liquidation” as a hedging and liquidation mechanism in the context of managing a defaulting CP’s portfolio. This removal would reflect previously approved changes to ICC’s Clearing Participant Default Management Procedures and CDS Rules.²⁷ ICC further proposes to update titles and committee memberships to reflect current committee composition.

In Section VII., which addresses stress scenarios, ICC proposes to state that whether a member is in default in each clearing service will be determined independently under the rules of each clearing service, except when, specifically, should a common member default in a single clearing service, such event will not automatically lead to a default declaration of such common member in the other ICC clearing service. However, as ICC further proposes, the fact the common member

has defaulted in a single clearing service could lead to the determination that such common member is, in the judgement of ICC, likely to fail to meet any of its obligations to the other clearing service, which could be a basis for declaring such common member in default in the other clearing service. Other proposed minor changes and clarifying edits to Section VII. include the addition of Treasury Participants to ICC’s existing monitoring mechanisms, and the removal of modifiers from and an addition of a parenthetical to the list of monitored metrics to apply to both clearing services.²⁸

Regarding Section VIII., which describes available recovery tools, ICC proposes to state that the use of these recovery tools is done separately under the rules of each clearing service.²⁹ ICC proposes to clarify that as each of the CDS and Treasury clearing services are designed to be independent with their own separate rulebooks, memberships and default resources, ICC does not expect that a recovery caused by a participant default in one clearing service will cross over to cause a recovery scenario in the other service. Under the Proposed Rule Change, Section VIII. would state that the CDS General Guaranty Fund and CDS margin assets will not be used to cover losses from a default in the Treasury clearing service, or vice versa, consistent with the separate rulebooks for the two clearing services. As proposed, new language would state that this design minimizes the financial risks posed by the Treasury clearing service to the CDS clearing service and vice versa.

With respect to the tools available to address credit losses in a participant default scenario, ICC proposes to amend Section VIII. by specifying that, for the Treasury clearing service, these tools generally include a declaration of a Treasury Participant default, communicating the default, and conducting default management actions to eliminate, settle, reduce, or replace the risk of the defaulter’s open Treasury positions. Other revisions to Section VIII. would add a subsection describing ICC’s ability to run one or more default auctions to address credit losses in a participant default scenario in the Treasury clearing service,³⁰ and include

ICC’s financial resources hierarchy for the Treasury clearing service, in the order of consumption. ICC proposes to add a description of ICC’s Treasury Guaranty Fund,³¹ specifying which recovery tools are applicable to each clearing service in accordance with their respective rulebooks, and making clean-up changes to the overview of initial default auctions for the CDS clearing service.³²

With respect to tools used to address liquidity shortfalls in participant and non-participant default scenarios, ICC proposes to incorporate references to the Treasury clearing service, while differentiating from the CDS clearing service, where applicable. Under the Proposed Rule Change, Section VIII. would incorporate references to the Treasury Clearing Service Liquidity Risk Management Framework (“LRMF”) and describe the LRMF’s objectives and ICC’s liquidity waterfall, as well as include a subsection listing additional liquidity tools for the Treasury clearing service. ICC proposes to state that it is likely that a recovery scenario in one clearing service would not trigger a significant reduction in ICC’s employee headcount because the other clearing service would continue business-as-usual operations. Also in Section VIII., ICC proposes to remove a duplicate entry in the insurance coverage table.

As proposed, Section IX. would be amended by removing stale statements about direct customer participation in governance, since the CDS and Treasury Risk Committees provide for customer participation. ICC proposes to update terminology from “full tear-up” to “full termination” for consistency with the rulebooks, which use “termination” rather than “tear-up” when discussing the termination of clearing.³³

D. Proposed Changes Specific to the Wind-Down Plan

ICC proposes to amend its Wind-Down Plan, which establishes how ICC could be wound-down in an orderly manner in the event the recovery actions described in the ICC Recovery Plan failed to preserve ICC’s viability as a going concern, but before resolution has been triggered.³⁴

³¹ See Treasury Rule 801.

³² Such changes include updating examples to align with those included in the current version of the Default Auction Procedures—Initial Default Auctions and replacing existing tables and text-based examples with graphical illustrations to improve formatting and presentation. See Notice, 91 FR at 58211.

³³ See CDS Rule 810 and Treasury Rule 810.

³⁴ The Wind-Down plan also may be used if ICC makes a business decision to exit all clearing activities. See Notice, 91 FR at 58212.

²⁷ See Securities Exchange Act Release No. 103601 (July 31, 2025), 90 FR 37612 (Aug. 5, 2025) (File No. SR-ICC-2025-010).

²⁸ ICC states that such changes do not amend ICC’s existing practices for the CDS clearing service and maintain consistency with existing policies and procedures. See Notice, 91 FR at 58210.

²⁹ As in certain previous sections in the Recovery Plan, ICC also proposes to incorporate references to the Treasury clearing service and distinguish between the Treasury and CDS clearing services, where applicable.

³⁰ See Treasury Rule 20–605(d)(v).

In addition to the above common changes to both Plans, ICC proposes to amend Section VI., which covers wind-down options that will be used in the event that the recovery actions described in the Recovery Plan failed to preserve ICC's viability as a going concern and resolution has not been triggered. In particular, ICC proposes amendments to its approach, timeline, resources, considerations and/or potential impediments of each wind-down option to include the Treasury clearing service. The wind-down options of transfer, sale and termination currently apply to the CDS clearing service and would continue to do so, while extending to the Treasury clearing service under the Proposed Rule Change. As in the Recovery Plan, references to "tear-up" would be replaced with "termination."³⁵

Regarding all three options of transfer, sale, and termination described in Section VI., ICC proposes to update the description of these options to contemplate the transfer or sale of either the CDS clearing service or the Treasury clearing service, as well as the transfer or sale of both services. Regarding the transfer and termination options, ICC proposes to state that if only one clearing service will be transferred or terminated, ICC will need to continue to maintain risk, treasury, compliance, and operations teams on a business-as-usual basis for the remaining clearing service. In the case of either a transfer or sale, ICC proposes to include language that already exists for the CDS clearing service and apply it to the Treasury clearing service, allowing the transfer or sale of Treasury clearing activities from ICC to an alternative clearing house or another entity, respectively.³⁶ For both the transfer and sale options, ICC proposes to state that both CDS and Treasury clearing services will be transferred or sold, ICC anticipates pursuing the relevant processes in parallel, such that the anticipated timeline will not be delayed. With respect to the transfer option, ICC proposes adding a description as to potential impediments or considerations, specifying that there may be a limited number of potential recipient clearing houses because such clearing houses would be required to have all appropriate registrations. With respect to the sale option, ICC proposes to state that if only one clearing service will be sold, a service provider may prefer to provide transitional services to the recipient clearing house for a

specified time period. With respect to the termination option, ICC proposes to define the termination option to include the termination of open Treasury positions ideally through orderly close out, and if orderly close out is not achieved, through the termination of open positions.

In Section VIII., ICC proposes to incorporate references to the Treasury clearing service in the description of contractual arrangements in the context of continuation of services during wind-down, while distinguishing it from the CDS clearing service and identifying which arrangements are applicable to each clearing service. Specifically, ICC proposes to make conforming changes to the description of the relevant contractual provisions and to analysis of the potential impact that such provisions would have on wind-down implementation.³⁷

Lastly, ICC proposes updating Section XI. regarding certain clearing process charts in Section XI.B and C. ICC proposes to specify that these charts reflect the CDS clearing service, as the Treasury clearing service has not yet launched. Accordingly, Treasury clearing process charts would not be included at this time, and this section will need to be updated in a future filing.

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.³⁸ 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."³⁹

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,⁴⁰ 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.⁴¹ 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.⁴²

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 ICC. 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,⁴³ and Rules 17ad-22(e)(3), 17ad-26(a)(1), 17ad-26(a)(8), and 17ad-26(a)(9) under the Act.⁴⁴

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 ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.⁴⁵

A recovery, wind-down, or business disruption could lead to the failure of ICC's business operations in the CDS and Treasury clearing spaces, which could, in turn, inhibit the prompt and accurate clearance and settlement of transactions at ICC. Because the Recovery Plan and the Wind-Down Plan would facilitate the continuity and orderly functioning of ICC's clearing services in the case of a business disruption severe enough to necessitate recovery or wind-down, the Plans help ensure that ICC can continue to operate in those situations, and thus continue clearing and settling securities transactions in CDS and U.S. Treasury markets.

As noted above, the Proposed Rule Change primarily would update the Plans with current information by incorporating references to the recently established Treasury clearing service throughout the Plans and distinguishing between the Treasury and CDS clearing services, where applicable. The

⁴¹ *Id.*

⁴² *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

⁴³ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁴ 17 CFR 240.17ad-22(e)(3), 17 CFR 240.17ad-26(a)(1), 17 CFR 240.17ad-26(a)(8), and 17 CFR 240.17ad-26(a)(9).

⁴⁵ 15 U.S.C. 78q-1(b)(3)(F).

³⁷ An example of such impact is the effect of a counterparty's termination of an agreement on a non-impacted clearing service. See Notice, 91 FR at 58213.

³⁸ 15 U.S.C. 78s(b)(2)(C).

³⁹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁴⁰ *Id.*

³⁵ See *supra* n. 32 and accompanying text.

³⁶ Such a transfer or sale would include open positions. See Notice, 91 FR at 58213.

Proposed Rule Change also would incorporate into the Plans current information about, among other things, internal governance groups and committees, finances, references to industry best practices rather than withdrawn regulatory guidance, the annual review process and testing of the Plans, contractual arrangements, and recovery tools and wind-down options. By providing the most current information about the incorporation of the Treasury clearing services and other key topics, the Proposed Rule Change will support ICC's ability to monitor its finances, assess its Plans annually under the appropriate governance, and evaluate its regulatory capital. This in turn will help ensure ICC has the financial resources to promptly and accurately clear and settle transactions during recovery and, if necessary, conduct an orderly wind-down.

Additionally, these proposed changes help ensure visibility into and transparency of the Plans and into the processes ICC has developed to ensure continuity, or an effective wind-down, should certain circumstances threaten its viability. The updated information ensures that the Plans remain current and relevant, and thereby effectively serve their intended purpose. Since both the transparency and relevancy of the Plans are factors that support the Plans' ability to help facilitate the continuity and orderly functioning of ICC in the case of a recovery or winddown, those factors help ensure ICC can meet its business obligations in such situations, and thus continue clearing and settling securities transactions.

Accordingly, the Proposed Rule Change promotes the prompt and accurate clearance and settlement of transactions at ICC, consistent with Section 17A(b)(3)(F) of the Act.⁴⁶

B. Consistency With Rule 17ad-22(e)(3) Under the Act

Rule 17ad-22(e)(3)(ii) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.⁴⁷

As described above, ICC proposes to update its Recovery Plan and Wind-Down Plan to include provisions pertaining to the newly established Treasury clearing service and distinguish recovery and wind-down operations from those applicable to the CDS service, where applicable. As proposed, the Plans would align many provisions regarding governance, financials, contractual arrangements, review processes of Plans, and terminology. Under the Proposed Rule Change, the Recovery Plan would clarify key recovery elements, such as by stating that the CDS and Treasury clearing services operate separately in terms of financial resources. The proposed changes to the Recovery Plan also would address stress scenarios, including by clarifying that, generally, the determination as to whether a member is in default in each clearing service will be determined independently. The Recovery Plan also would be updated to include current descriptions of available recovery tools, other tools available to address credit losses in a participant default scenario, and tools used to address liquidity shortfalls in participant and non-participant default scenarios. Likewise, under the Proposed Rule Change, the Wind-Down Plan would update ICC's approach, timeline, resources, considerations and/or potential impediments of each wind-down option to include the Treasury clearing service, while retaining the wind-down options of transfer, sale and termination that currently apply to the CDS clearing service. The Wind-Down Plan, as proposed, also would incorporate references to the Treasury clearing service in the description of contractual arrangements in the context of continuation of services during wind-down, while distinguishing it from the CDS clearing service and identifying which arrangements are applicable to each clearing service. Overall, the Plans, as proposed, would align not only to each other, but also with applicable CDS Rules and Treasury Rules.

These proposed changes reduce the risk that the Plans may not contain current information and provide a more accurate and useful playbook for ICC in case of recovery and/or orderly wind-down. Thus, these proposed changes should improve ICC's ability to conduct a recovery and/or orderly wind-down using the Plans.

Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17ad-22(e)(3)(ii) under the Act.⁴⁸

C. Consistency With Rule 17ad-26(a)(1) Under the Act

Rule 17ad-26(a)(1)(i)-(ii) requires ICC's plans for recovery and orderly wind-down to identify and describe ICC's core payment, clearing, and settlement services and address how ICC would continue to provide such core services in the event of a recovery and during an orderly wind-down, including by identifying the staffing roles necessary to support such core services; and analyzing how such staffing roles necessary to support such core services would continue in the event of a recovery and during an orderly winddown.⁴⁹

As described above, ICC's proposed changes identify staffing roles necessary to support core services of the CDS clearing service and the Treasury Clearing service. Regarding staffing considerations and specifically as to the roles necessary to support the core services on a daily basis and in the event of recovery or wind-down, ICC proposes to state in both Plans that, in general, all staff in a functional area provide support for all cleared products and markets at ICC and personnel are not split between the CDS and Treasury clearing services. Additionally, these staffing roles do not refer to specific personnel or employees, but instead to positions, roles, and personnel functions that are necessary for the continuation of core services. By confirming that all staff in a functional area are not split between the CDS and Treasury clearing services, and thus existing staff in the CDS service support the core services of the Treasury clearing service, these changes would identify the staffing roles necessary to support core services for the Treasury clearing and how those would continue in the event of a recovery and during an orderly winddown.

Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17ad-26(a)(1)(i)-(ii) under the Act.⁵⁰

D. Consistency With Rule 17ad-26(a)(8) Under the Act

Rule 17ad-26(a)(8)(iii) requires ICC's plans for recovery and orderly wind-down to include procedures for testing ICC's ability to implement the recovery and orderly wind-down plans at least every 12 months, including by, among other things, providing for reporting the results of such testing to ICC's board of directors and senior management.⁵¹

⁴⁶ *Id.*

⁴⁷ 17 CFR 240.17ad-22(e)(3)(iii).

⁴⁸ *Id.*

⁴⁹ 17 CFR 240.17ad-26(a)(1)(i)-(ii).

⁵⁰ *Id.*

⁵¹ 17 CFR 240.17ad-26(a)(8)(iii).

As described above, under the Proposed Rule Change, the results of testing of the Plans will be provided to the Treasury Risk Committee and Board Risk Committee, in addition to the CDS Risk Committee and Board. This would accommodate the splitting off of the separate CDS Risk Committee and the Treasury Risk Committees for consistency with the CDS Rules and Treasury Rules. The CDS and Treasury Risk Committees would continue to review material matters impacting the Recovery Plan and the Wind-Down Plan but would no longer be required to conduct a separate review solely in connection with each Plan. ICC further proposes to specify that the results of testing of the Plans will be provided to the Treasury Risk Committee and Board Risk Committee, in addition to the CDS Risk Committee and Board, thus providing for reporting the results of such testing to ICC’s board of directors and senior management.

Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17ad–26(a)(8)(iii) under the Act.⁵²

D. Consistency With Rule 17ad–26(a)(9) Under the Act

Rule 17ad–26(a)(9) requires ICC’s plans for recovery and orderly wind-down to include procedures requiring review and approval of the Plans by the ICC’s Board at least every 12 months or following material changes to ICC’s operations that would significantly affect the viability or execution of the plans, with such review informed, as appropriate, by ICC’s testing of the plans.⁵³

As proposed, the annual review process of the Plans would be extended to incorporate references to Treasury clearing service and Treasury Rules, and distinguish between the Treasury and CDS clearing services and respective rulebooks. Additionally, the Proposed Rule Change would update the governance process to include that the annual review of the Plans and any material amendments to them would be presented to the Board Risk Committee, who would then make a recommendation to the Board regarding their approval. As such, the Plans would continue to include procedures requiring review and approval of the Plans by ICC’s Board at least every 12 months or following material changes to ICC’s operations that would significantly affect the viability or execution of the Plans, but would encompass as part of those operations ICC’s newly established Treasury

clearing service and changes to risk committees. Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17ad–26(a)(9) under the Act.⁵⁴

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,⁵⁵ and Rules 17ad–22(e)(3), 17ad–26(a)(1), 17ad–26(a)(8), and 17ad–26(a)(9)⁵⁶ thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act⁵⁷ that the proposed rule change (SR–ICC–2026–009) be, and hereby is, approved.⁵⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁹

Sherry R. Haywood,
Assistant Secretary.
[FR Doc. 2026–22026 Filed 10–28–26; 8:45 am]
BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21992 and #21993;
KENTUCKY Disaster Number KY–20035]

Administrative Declaration of a
Disaster for the Commonwealth of
Kentucky

AGENCY: U.S. Small Business
Administration.
ACTION: Notice.

SUMMARY: This is notice of an
Administrative declaration of a disaster
for the commonwealth of Kentucky
dated October 26, 2026.

Incident: Severe Storms, Straight-line
winds, Tornadoes, and Flooding.

DATES: Issued on October 26, 2026.

Incident Period: June 18, 2026
through June 27, 2026.

Physical Loan Application Deadline
Date: December 28, 2026.

Economic Injury (EIDL) Loan
Application Deadline Date: July 26,
2027.

ADDRESSES: Visit the MySBA Loan
Portal at <https://lending.sba.gov> to
apply for a disaster assistance loan.

⁵⁴ *Id.*
⁵⁵ 15 U.S.C. 78q–1(b)(3)(F).
⁵⁶ 17 CFR 240.17ad–22(e)(3), 17 CFR 240.17ad–
26(a)(1), (8), and (9).
⁵⁷ 15 U.S.C. 78s(b)(2).
⁵⁸ 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).
⁵⁹ 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT:
Robert Camacho, Office of Disaster
Recovery, 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 at
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 Counties: Bullitt, Cumberland,
Madison.

Contiguous Counties:

Kentucky: Adair, Clark, Clinton,
Estill, Fayette, Garrard, Hardin,
Jackson, Jefferson, Jessamine,
Metcalf, Monroe, Nelson,
Rockcastle, Russell, Spencer.
Tennessee: Clay.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Avail- able Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Avail- able Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organiza- tions with Credit Available Elsewhere	3.625
Private Non-Profit Organiza- tions without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organiza- tions without Credit Available Elsewhere	3.625

The number assigned to this disaster
for physical damage is 21992B and for
economic injury is 219930.

The commonwealth and state which
received an SBA Administrative
declaration are Kentucky, Tennessee.
(Catalog of Federal Domestic Assistance
Number 59008)

⁵² *Id.*
⁵³ 17 CFR 240.17ad–26(a)(9).

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026-22053 Filed 10-28-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION**[Disaster Declaration #21995 and #21996; INDIANA Disaster Number IN-20025]****Administrative Declaration of a Disaster for the State of Indiana****AGENCY:** U.S. Small Business Administration.**ACTION:** Notice.**SUMMARY:** This is notice of an Administrative declaration of a disaster for the state of Indiana dated October 26, 2026.

Incident: Severe Storms and Flooding.

DATES: Issued on October 26, 2026.

Incident Period: September 17, 2026.

Physical Loan Application Deadline Date: December 28, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: July 26, 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, 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 at 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: Wells.
Contiguous Counties:

Indiana: Adams, Allen, Blackford, Grant, Huntington, Jay.

The Interest Rates are:

	Percent
For Physical Damage:	
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
For Economic Injury:	
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 219956 and for economic injury is 219960.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026-22045 Filed 10-28-26; 8:45 am]

BILLING CODE 8026-09-P

SOCIAL SECURITY ADMINISTRATION**[Docket No: SSA-2026-1189]****Agency Information Collection Activities: Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to

minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833-410-1631, Email address: OR.Reports.Clearance@ssa.govOr you may submit your comments online through <https://www.reginfo.gov/public/do/PRAmain> by clicking on Currently under Review—Open for Public Comments and choosing to click on one of SSA's published items. Please reference Docket ID Number [SSA-2026-1189] in your submitted response.SSA submitted the information collections below to OMB for clearance. To be sure OMB and SSA consider your comments regarding these information collections, we must receive them no later than November 30, 2026. Individuals can obtain copies of the OMB clearance packages by writing to the OR.Reports.Clearance@ssa.gov.

1. *Statement of Income and Resources*—20 CFR 416.207, 416.302–416.310, 416.704, 416.708, and 416.1160–0960–0124. SSA collects information about income and resources for Supplemental Security Income (SSI) claims and redeterminations on the SSA-8010-BK from third party individuals (e.g., parents, spouses, guardians, or other individuals typically in the role of representative payee) who support the SSI applicant or recipient. SSA uses the information from the SSA-8010-BK to make initial or continuing eligibility determinations for SSI claimants or recipients who are subject to deeming. The respondents are third party individuals who support SSI claimants or recipients, and whose income and resources SSA may deem (consider to be available as their own) to SSI applicants or recipients.

Type of Request: Revision of an OMB-approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time in field office or for teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
SSA-8010-BK (Intranet)	1,855,340	1	20	618,447	*\$33.54	** 11	\$32,151,209

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-8010-BK (Paper)	61,380	1	20	20,460	* 33.54	** 11	*** 1,063,654
Totals	1,916,720			638,907			*** 33,214,863

* We based this figure on an average U.S. citizen's hourly salary (\$33.54), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

** We based this 11-minute figure on average October 2026 wait times (specifically, the arithmetic mean of a 20-minute field-office wait time and a 1-minute wait time for a call to be picked up automatically by our systems and then routed to an SSA technician. Both the 20-minute and 1-minute figures are themselves averages captured by management information data and posted on our public-facing website, Social Security performance | SSA. As the figures fluctuate, the actual wait times may differ slightly from the averages reported here. We will update these figures periodically to reflect the most accurate available data.

*** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

2. Waiver of Your Right to Personal Appearance before a Judge—20 CFR 404.930, 404.948(b)(1)(i), 404.957, 416.1430, 416.1448(b)(1)(i), and 416.1457—0960-0284. Applicants for Social Security, Old Age, Survivors, and Disability Insurance (OASDI) benefits and SSI payments have the statutory right to personally appear (either on their own or through a representative) and present evidence about their claims at a hearing before a judge. Per SSA regulations, if a claimant is dissatisfied with a determination or decision listed in 20 CFR 404.930 or 416.1430, the claimant may request a hearing before a judge and has a right to appear at a hearing before a judge. At a hearing, claimants have the right to present evidence; have witnesses testify on their behalf; and present their cases to the

judge. A hearing may provide the judge with additional information to make a more informed decision on the case. However, in some cases, claimants may choose to waive their right to appear before a judge for various reasons, including if they feel the evidence of record stands on its own, or if they are unable to attend a hearing due to extenuating circumstances. When a claimant chooses to waive the right to appear at a hearing and allows the judge to decide the case based on the written evidence of record alone, we ask the claimant to submit this request to us in writing so we can document it in their record. While SSA will accept a written request, we also allow claimants to use Form HA-4608 to serve as a written waiver for the claimant's right to a personal appearance before a judge. The

claimant may complete the paper version of the HA-4608 and mail it back to SSA using the pre-paid envelope SSA sends with it, or the claimant may choose to complete the submittable PDF version of the HA-4608 through SSA's Upload Documents Portal (OMB No. 0960-0830) on SSA's website. The judge uses the information we collect on Form HA-4608 to continue processing the case and makes the completed form a part of the documentary evidence of record by placing it in the official record of the proceedings as an exhibit. Respondents are applicants or claimants for OASDI and SSI, or their representatives, who request to waive their right to appear before a judge.

Type of Request: Revision of an approved-OMB information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
HA-4608 (Paper Version)	4,132	1	5	344	* \$14.27	** \$4,909
HA-4608 (Upload Documents Version)	1,483	1	5	124	* 14.27	** 1,769
Totals	5,615			468		** 6,678

* We based this figure on average disability payments (\$14.27) based on SSA's current FY 2026 data (Effect of COLA on Average Social Security Benefits).

** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

3. Request for Change in Time/Place of Disability Hearing—20 CFR 404.91(c)(2) and 416.1414(c)(2)—0960-0348. At the request of the claimants or their representatives, SSA schedules evidentiary hearings at the reconsideration level for claimants of Title II benefits or Title XVI payments

when we deny their claims for disability. When claimants or their representatives find they are unable to attend the scheduled hearing, they complete Form SSA-769 to request a change in time or place of the hearing. SSA uses the information from the form as a basis for granting or denying

requests for changes and for rescheduling disability hearings. Respondents are claimants or their representatives who wish to request a change in the time or place of their reconsideration hearing.

Type of Request: Revision of an OMB approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA-769	24,599	1	8	3,280	* \$14.27	** \$46,806

* We based this figure on average disability payments (\$14.27) based on SSA's current FY 2026 data (Effect of COLA on Average Social Security Benefits).

** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

4. Marital Relationship Questionnaire—20 CFR 416.1826—0960–0460. SSA uses Form SSA–4178, Marital Relationship Questionnaire, to determine if unrelated individuals of the opposite sex who live together are

presenting themselves as husband and wife. SSA needs this information to determine whether we are making correct payments to couples and individuals applying for, or currently receiving, Supplemental Security

Income (SSI) payments. The respondents are applicants for, and recipients of, SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–4178 (Paper)	3,331	1	5	278	* \$14.27	** 20	*** \$19,807
Technician Interview (via SSI Systems or CCE)	7,226	1	5	602	* 14.27	** 20	*** 42,967
SSA–4178 (Upload Documents)	426	1	5	36	* 14.27	N/A	*** 514
Totals	10,983			916			*** 63,288

* We based this figure on average disability payments (\$14.27) based on SSA's current FY 2026 data (Effect of COLA on Average Social Security Benefits).

** We based this figure on the average October 2026 wait time for field offices (20 minutes), as captured by SSA's current management information data. This figure is also posted on our public-facing website (Social Security performance | SSA). As the figures fluctuate, the wait times may be different on the website than they appear here. While we have included wait time for all respondents who complete the paper form, we note that respondents are not required to complete the form in person, and those who mail or drop off a completed form do not experience any wait time.

*** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

5. Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960–0472. When SSA records show a wage earner is deceased, and we receive wage reports from an employer for the wage earner for a year subsequent to the year of death, SSA mails the employer Form SSA–L4112

(Employer Verification of Earnings After Death). SSA uses the information provided on Form SSA–L4112 to verify that the wage information previously received from the employer is correct for the employee and the year in question (the year following the employee's death). This process helps

ensure the accuracy and integrity of earnings records. The respondents are employers who report wages for employees who have died.

Type of Request: Revision of an OMB-approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–L4112	27,304	1	20	9,101	* 33.54	** \$305,248

* We based this figure on an average U.S. citizen's hourly salary (\$33.54), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

6. Pain Report Child—20 CFR 404.1512 and 416.912—0960–0540. Before SSA can make a disability determination for a child, we require evidence from parents, guardians, or individuals who know the child well and observe their daily life and symptoms to prove their disability.

Form SSA–3371–BK provides disability interviewers, and SSI applicants or claimants in self-help situations, with a convenient way to record information claimants' pain or other symptoms. The State disability determination services adjudicators and judges use the information from Form SSA–3371–BK

to assess the effects of symptoms on function for purposes of determining disability under the Act. The respondents are parents, guardians, or individuals who know a child SSI applicant or recipient well.

Type of Request: Revision of an OMB-approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3371	1,500	1	15	375	* \$23.91	** 20	*** \$20,921

* We based these figures on the combined average of both disability payments (\$14.27) based on SSA's current FY 2026 data (Effect of COLA on Average Social Security Benefits) and on the average U.S. worker's hourly wages (\$33.54), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

** We based this figure on the average October 2026 wait time for field offices (20 minutes), as captured by SSA's current management information data. This figure is also posted on our public-facing website (Social Security performance | SSA). As the figures fluctuate, the wait times may be different on the website than they appear here. While we have included wait time for all respondents who complete the paper form, we note that respondents are not required to complete the form in person, and those who mail or drop off a completed form do not experience any wait time.

*** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

7. Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547. Pension plan administrators

annually file plan information with the Internal Revenue Service, which then forwards the information to SSA. SSA

maintains and organizes this information by plan number, plan participant's name, and Social Security

number. Per section 1131(a) of the Act, pension plan participants are entitled to request this information from SSA. The Wage Reports and Pension Information regulation, 20 CFR 422.122(b) of the

Code of Federal Regulations, stipulates that before SSA disseminates this information, the requestor must first submit a written request with identifying information to SSA. The

respondents are Social Security number holders who are requesting information about that pension plan from SSA.

Type of Request: Revision of an OMB approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average teleservice answer time (minutes)**	Total annual opportunity cost (dollars)***
Requests for Pension Plan Information	178	1	30	89	*\$33.54	** 1	*** \$3,086

*We based this figure on an average U.S. citizen's hourly salary (\$33.54), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

**We based this figure on the October 2026 answer times for the teleservice centers (1 minute, which represents the average time it takes for a call to be picked up automatically by our systems and then routed to an SSA technician). This figure reflects data from our systems and the data posted on our public facing website (Social Security performance | SSA) on the date we drafted this document. As the figures fluctuate, the wait times may be different on the website than they appear here.

***This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

8. Work Incentives Planning and Assistance Program (WIPA) Star System, SSA-4565, and SSA-4566-0960-0629. As part of SSA's strategy to assist Social Security Disability Insurance (SSDI) beneficiaries and Supplemental Security Income (SSI) recipients who wish to return to work and achieve self-sufficiency, SSA established the Work Incentives Planning and Assistance (WIPA) program. This community-based, work incentive, planning and assistance project collects identifying claimant information via project sites and community work incentives coordinators (CWIC) through the WIPA Star System. SSA uses this information

to ensure proper management of the project, with particular emphasis on administration, budgeting, and training. SSA uses Form SSA-4565 (WIPA Intake Information) to collect data from SSDI beneficiaries and SSI recipients on background employment, training, benefits, and work incentives. CWICs use Form SSA-4566 (WIPA Notes) to create a case note to record actions taken for a beneficiary. In addition, CWIC managers use Form SSA-451 (WIPA Manager Report) to complete and submit a quarterly report to SSA. The CWICs primarily use the WIPA Star System that allows the CWIC to: (1) provide SSA with information provided

on Form SSA-4565, and additional information on beneficiaries served under the WIPA program; (2) manage their case notes for beneficiaries; (3) collect additional information not collected on Forms SSA-4565 and SSA-4566 which allows SSA to monitor WIPA grantee's performance and progress; and (4) allow the CWIC managers to complete and submit the SSA-451 quarterly report to SSA. The respondents are SSDI beneficiaries, SSI recipients, community project sites, and community work incentives coordinators.

Type of Request: Revision of an OMB-approved information collection.

Method of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time teleservice answer time (minutes)**	Total annual opportunity cost (dollars)***
SSA-4565 (Fields 1-20-SSI & SSDI Beneficiaries)	15,810	1	15,810	8	2,108	*\$14.27	** 1	*** \$33,848
SSA-4565 (Fields 21-63-SSI & SSDI Beneficiaries by phone)	+ 1	1	1	1	0	* 1	N/A	*** 1
SSA-4566 (WIPA staff)	+ 1	1	1	1	0	* 1	N/A	*** 1
Totals	15,812		15,812		2,110			*** 33,850

WIPA STAR SYSTEM

Method of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars)*	Average wait time teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
WIPA referral (SSI & SSDI beneficiaries)	5,190	1	5,190	8	692	*\$14.27	N/A	*** \$9,875
WIPA referral data input collected using the SSA-4565 (WIPA staff)	310	51	15,810	5	1,318	*35.23	N/A	*** 46,433
WIPA intake (SSI & SSDI beneficiaries)	21,000	1	21,000	17	5,950	* 14.27	N/A	*** 84,907
WIPA case notes (WIPA staff)	310	430	133,300	2	4,443	*35.23	N/A	*** 156,527
Task management (WIPA staff)	310	134	41,540	1	692	*35.23	N/A	*** 24,379
Service management (WIPA staff)	310	381	118,110	1	1,969	*35.23	N/A	*** 69,368
SSA-451-Quarterly Report (WIPA managers)	73	4	292	60	292	*42.73	N/A	*** 12,477
Totals	27,503		335,242		15,356			*** 403,966

WIPA STAR SYSTEM—Continued

Method of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Grand Totals	43,315		351,054		17,464			*** 441,569

* We are placing a place holder for paper Forms SSA-4565 (Fields 21–63—SSI & SSDI Beneficiaries) and SSA-4566, as SSA only uses the paper versions of these forms as a backup collection instrument if the WIPA STAR system becomes unavailable. As such, we do not anticipate any respondents will use the PDF versions of these forms under normal circumstances, therefore, we are including a placeholder burden here.

* We based this figure on average disability payments (\$14.27) reflecting SSA's current FY 2026 data (Effect of COLA on Average Social Security Benefits), the Health Education Specialist (\$35.23) and Social Community Service Managers (\$42.73), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

** We based this figure on the October 2026 answer times for the teleservice centers (1 minute, which represents the average time it takes for a call to be picked up automatically by our systems and then routed to an SSA technician). This figure reflects data from our systems and the data posted on our public facing website (Social Security performance | SSA) on the date we drafted this document. As the figures fluctuate, the wait times may be different on the website than they appear here.

*** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

9. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA requires all applicants and recipients of Social Security OASDI benefits, or Supplemental Security Income (SSI) payments to receive these benefits and payments via direct deposit, at a financial institution. SSA receives Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment

information from OASDI beneficiaries and SSI recipients to facilitate DD/EFT of their funds, with their chosen financial institution. We also use this information when an enrolled individual wishes to change their DD/EFT information. For the convenience of the respondents, we collect this information through several modalities, including an internet application, in-

office or telephone interviews, and our automated telephone system.

Respondents are OASDI beneficiaries and SSI recipients requesting that we enroll them in the Direct Deposit program or change their direct deposit banking information.

Type of Request: Revision of an OMB-approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Internet Direct Deposit Application	4,608,177	1	16	1,228,847	* \$33.54	N/A	*** \$41,215,528
Non-Electronic Services (FO, 800#)	3,402,371	1	9	510,356	* 33.54	** 11	*** \$38,038,519
Totals	8,010,548			1,739,203			*** 79,254,047

* We based this figure on an average U.S. citizen's hourly salary (\$33.54), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

** We based this 11-minute figure on average October 2026 wait times (specifically, the arithmetic mean of a 20-minute field-office wait time and a 1-minute wait time for a call to be picked up automatically by our systems and then routed to an SSA technician). Both the 20-minute and 1-minute figures are themselves averages captured by management information data and posted on our public-facing website, Social Security performance | SSA. As the figures fluctuate, the actual wait times may differ slightly from the averages reported here. We will update these figures periodically to reflect the most accurate available data.

*** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

10. Notice to Electronic Information Exchange Partners to Provide Contractor List—0960–0820. The Federal standards Privacy Act of 1974; E-Government act of 2002; and the National Institute of Standards and Technology Special Publications 800–53–4, require SSA to maintain oversight of the information it provides to Electronic Information Exchange Partners (EIEPs). EIEPs obtain SSA data for the administration of federally funded and state-administered programs. SSA has a responsibility to monitor and protect the personally identifiable information SSA shares with other Federal and State agencies. EIEPs agree to comply with Electronic

Information Exchange security requirements and procedures for State and local Agencies exchanging electronic information with SSA. SSA's Technical Systems Security Requirements document provides that all agencies using SSA data must ensure SSA information is not processed; maintained; transmitted; or stored in; or by means of data communications channel; electronic devices; computers; or computer networks located in geographic or virtual areas not subject to U.S. law. SSA conducts tri-annual compliance reviews of all State and local agencies, and Tribes with whom we have an IEA, to verify appropriate

security safeguards remain in place to protect the confidentiality of information SSA supplies. SSA requires any organization with an electronic data exchange agreement to provide SSA with a current list of contractors, or agents who have access to SSA data upon request. SSA uses Form SSA-731, Notice to Electronic Information Exchange Partners to Provide Contractor List to collect the list of current contractors. The respondents are Federal agencies and State, local, or tribal agencies who exchange electronic information with SSA.

Type of Request: Revision of an OMB approved information collection.

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA-731	300	1	20	100	* 33.54	** \$3,354

* We based this figure on an average U.S. worker's hourly wages (\$33.54), as reported by Bureau of Labor Statistics data (Occupational Employment and Wage Statistics).

** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

11. *State of Georgia's Criminal Justice Coordinating Council's (CJCC) Evaluation of the Implementation of the Supplemental Security Income (SSI)/ Social Security Disability Insurance (SSDI) Outreach, Access, and Recovery (SOAR) Model in County Jails—0960–0833.* SSA is in a cooperative agreement with the State of Georgia's Criminal Justice Coordinating Council (CJCC) to conduct an intervention and evaluation of the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) Outreach, Access, and Recovery (SOAR) model in county jails with inmates with serious and persistent mental illness (SPMI) across the state. In addition to SSA, CJCC partnered with: (1) Applied Research Services (ARS), (2) the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD), and (3) four county jails to implement the program. For this intervention, investigators hypothesized that untreated mental illness and repeated psychiatric crises may be a factor in jail recidivism. Therefore, the ability for inmates with SPMI to receive SSI/SSDI and attendant insurance benefits may help them obtain treatment and thus help to mitigate their criminal

tendencies. This intervention connects respondents in four county jails identified as having SPMI to Medicaid Eligibility Specialists (MES) hired and trained by the Georgia DBHDD, who help them apply for SSI and SSDI. Respondents in two of the four counties (Fulton County Jail and Cobb County Jail) also have the option of working with a Forensic Peer Mentor (FPM), a formerly incarcerated individual who is familiar with resources that may help participants increase their quality-of-life post incarceration and avoid recidivism. SSA works with the two DBHDD MESs who are serving the participants over the total life of the project. To maximize the likelihood of the SSI/SSDI application approval, the MES employs the SOAR method, which uses in-depth medical and personal summaries of disability to facilitate the SSI/SSDI application process. Researchers collect data from participant surveys to evaluate and study the impact of the intervention. Through the data collected through these surveys, along with administrative data from SSA, the State of Georgia, participating counties, and DBHDD hope to address the following research questions:

- Does connection to a SOAR-trained specialist increase the likelihood that a

person with SPMI in jail will be approved for SSI/SSDI benefits?

- If a person with SPMI receives SSI/SSDI benefits, are they able to connect to treatment resources that they may not have been able to obtain before?
- If a person with SPMI connects to treatment resources and successfully engages with them, are they able to achieve mental health recovery and stay out of jail?

To date, we began the initial enrollment and informed consent phase of this intervention, and we are currently completing this stage. We also began the follow-up survey stage for the first set of enrollees in the intervention, and we will continue to administer the follow-up survey as needed through 2027 until we complete this phase with all the respondents.

The respondents are individuals with serious and persistent mental illness incarcerated in county jails in the state of Georgia.

Type of Request: Revision of an OMB approved information collection.

The following chart shows the current burden information for the remaining information collections associated with this intervention:

Method of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical cost amount (dollars) *	Total annual opportunity cost (dollars) **
Initial Enrollment Survey (Paper)	+ 10	1	19	3	* \$ 14.27	** \$43
Informed Consent (Paper)	+ 10	1	10	2	* 14.27	** 28
Follow-up Survey (Internet or Telephone)	+ 60	1	23	23	* 14.27	** 328
Totals	+ 80			51		** 399

+ These figures reflect the remaining respondents for these information collections from the total respondents who are taking part in this intervention.

* We based this figure on average disability payments (\$14.27) based on SSA's current FY 2026 data (Effect of COLA on Average Social Security Benefits).

** This figure does not represent actual costs that SSA is imposing on individuals; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the information collection. *There is no actual charge to respondents to complete the information collection.*

Mark Steffensen,

General Counsel, Chief of Law, Policy and Legislative Affairs, Social Security Administration.

[FR Doc. 2026–22073 Filed 10–28–26; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 13158]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “The Holocaust: History. Memory. Responsibility.” 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 “The Holocaust: History. Memory. Responsibility.” by the Holocaust Legacy Foundation at its future Holocaust Museum Boston, in Boston, Massachusetts, 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. 2026–22054 Filed 10–28–26; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21158]

TBL Group, Inc.—Acquisition of Control—Horizon Motor Coach, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: TBL Group, Inc. (TBL Group), a noncarrier holding company that controls multiple interstate motor passenger carriers, has filed an application to acquire control of the member interests in or the primary assets of Horizon Motor Coach, Inc. (Horizon), a federally regulated motor passenger carrier. The Board is tentatively approving and authorizing the transaction. If no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by December 14, 2026. If any comments are filed, TBL Group may file a reply by December 28, 2026. If no opposing comments are filed by December 14,

2026, this notice shall be effective on December 15, 2026.

ADDRESSES: Comments, referring to Docket No. MCF 21158, may be filed with the Board either via e-filing on the Board's website or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of any comments filed with the Board must also be sent to TBL Group's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT:

Amy Ziehm at (202) 918–5462. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: On September 29, 2026, TBL Group filed an application under 49 U.S.C. 14303 and 49 CFR part 1182 for Board authority to acquire control of the member interests in or the primary assets of Horizon. (Appl. 1.) According to TBL Group, either a newly created subsidiary, TBL Newco, will acquire and operate substantially all of the motor carrier assets of Horizon, or TBL Group will directly acquire the Horizon corporate entity. (*See id.* at 1–2, 11.) The application explains that in either case, the services currently provided by Horizon will continue to be provided after the proposed transaction. (*Id.* at 10–11.)

The application states that TBL Group is a Texas corporation, headquartered in Houston, Tex. (*Id.* at 2.) TBL Group asserts that it is not a federally regulated carrier but that it controls six interstate passenger motor carriers (Affiliated Regulated Carriers): GBJ, Inc. (GBJ), Echo Tours & Charters, LP (Echo Tours); Echo East Coast Transportation LLC (Echo East); Echo Windy City, LLC (Echo Windy); Reston Limousine & Travel Service, Inc. (Reston); and Echo Nevada, LLC (Echo Nevada).¹ (*Id.* at 2–6.)²

TBL Group states that GBJ is a Texas corporation doing business as Echo AFC Transportation, AFC Transportation, and Echo AFC Medical Transport that primarily provides charter and contract

¹ Additional information about these motor carriers, including principal places of business, U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, USDOT safety fitness ratings, fleet compositions, and driver counts, can be found in the application. (*See id.*, Ex. A.)

² TBL Group also lists four unregulated affiliates that it controls, which it states do not require interstate passenger motor carrier authority. (*See id.* at 2–3, 6–7.) The Affiliated Regulated Carriers and the four unregulated affiliates will be collectively referred to as “Affiliates.”

shuttle services for companies, employers, non-profits, schools, tour operators and transit and paratransit services for other transportation authorities in the metropolitan area of Houston, but also provides interstate charter passenger transportation service. (*Id.* at 3.)

TBL Group describes Echo Tours as a Texas limited partnership doing business as Echo Transportation that primarily provides charter and contract shuttle services for companies, non-profits, schools, and tour operators in the metropolitan area of Dallas, Tex., but also provides interstate charter passenger transportation. (*Id.* at 4.)

Echo East is described as a Texas limited liability company doing business as Echo East Coast Transportation that primarily provides interstate and intrastate contract shuttle and charter motor carrier passenger services in the metropolitan area of Jacksonville, Fla. (*Id.* at 4–5.)

TBL Group describes Echo Windy as a Texas limited liability company doing business as Echo Windy City Transportation that primarily provides intrastate limousine and premium car passenger charter service in the metropolitan area of Chicago, Ill., but can also provide interstate limousine and premium car passenger services. (*Id.* at 5.)

Reston is described as a Virginia corporation that provides interstate and intrastate limousine, shuttle, and charter passenger services in the metropolitan area of Washington, DC (*Id.* at 5–6.)

Lastly, TBL Group describes Echo Nevada as a Nevada limited liability company, doing business as Presidential Transportation, that provides limousine, shuttle, and charter passenger service in the metropolitan area of Las Vegas, Nev. (*Id.* at 6.)

Additionally, TBL Group states that it recently obtained authority to acquire the following additional carriers: BTM Coaches, Inc. (BTM Coaches); Chicago Classic Coach, LLC (Classic); and Escot Bus Lines, L.L.C. (Escot). (*Id.* at 2 nn.1–3 (citing *TBL Grp., Inc.—Acquis. of Control—BTM Coaches, Inc.*, MCF 21138 (STB served Sep. 24, 2025); *TBL Grp., Inc.—Acquis. of Control—Chi. Classic Coach, LLC*, MCF 21144 (STB served May 7, 2026); *TBL Grp., Inc.—Acquis. of Control—Escot Bus Lines, L.L.C.*, MCF 21152 (STB served June 26, 2026).) According to TBL Group, its authorized acquisitions of BTM Coaches and Classic may not close. (Appl. 2 nn.1–2.) TBL Group further states that it has not yet closed its acquisition of Escot. (*Id.* at 2 n.3.)

According to TBL Group, Horizon is a Georgia corporation formed in 1997.

(*Id.* at 7.) The application indicates that Horizon is a provider of traditional charter motor coach services for group travel, meeting and convention shuttle services, team travel services, school group travel, government and military employee travel, and other general charter bus services. (*Id.* at 7–8.)

TBL Group describes Horizon as a small charter service provider in the metropolitan area of Augusta, Ga., which includes a western portion of the state of South Carolina. (*Id.* at 8.) Horizon's headquarters and sole terminal are located at 949 Appling Harlem Road, Harlem, GA 30814. (*Id.*)

TBL Group also provides details about Horizon's USDOT number, FMCSA docket number, and safety rating. (*Id.*)³ In its operations, Horizon utilizes approximately 16 motor coaches, 4 mini-buses, 19 shuttle buses, and 3 passenger vans, while employing approximately 62 drivers. (*Id.*)

TBL states that the sole shareholder of Horizon, Alvin K. Harris, is an individual resident of the state of Georgia, who has no ownership interest in any other passenger motor carrier holding interstate motor carrier authority. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges resulting from the proposed transaction, and (3) the interest of affected carrier employees. TBL Group has submitted the information required by 49 CFR 1182.2, including information demonstrating that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during a consecutive 12-month period ending not more than six months before the date of the agreement of the parties, *see* 49 CFR 1182.2(a)(5).

TBL Group does not expect the proposed transaction to have any detrimental impact on the adequacy of transportation services available to the public in Horizon's service area. (Appl. 10.) TBL Group anticipates that services available to the traveling public will remain as they are now and may increase as additional demand is

anticipated in the service area. (*Id.*) TBL Group states that for the foreseeable future, the services currently provided by Horizon will continue to be provided after the transaction either (i) by TBL Newco in the event of an asset acquisition, or (ii) by Horizon in the event Horizon is acquired directly by TBL Group. (*Id.* at 10–11.) If consummated, the proposed transaction will bring the Horizon assets under the control of TBL Group, which states that it is experienced in most of the same types of services provided by Horizon, being charter motor coach services for group, school and team travel, and meeting, event and convention shuttle services, and transit services. (*Id.* at 11.) TBL Group argues that the transaction, combined with the passenger carrier management capacity of TBL Group, is expected to result in improved operating efficiencies, increased equipment utilization rates, and cost savings derived from economies of scale within TBL Group's Affiliates, all of which will help to ensure the provision of adequate service to the public. (*Id.*) The addition of Horizon's operations to TBL Group's organization will also serve to enhance the viability of TBL Group's organization and its Affiliates. (*Id.*) TBL Group asserts that the continued viability of TBL Group and its Affiliates assures the continued availability of adequate passenger transportation service to the public. (*Id.*)

TBL Group states that the proposed transaction will increase fixed charges in the form of interest expense, because funds will be borrowed to assist in the financing of the transaction. (*Id.* at 11–12.) However, TBL Group states that such an increase will not impact the provision of transportation services to the public. (*Id.* at 12.) With respect to employee interests, TBL Group states that it intends to continue the existing operations of Horizon, and that under either acquisition scenario, TBL Group will offer employment to substantially all current employees of Horizon without any negative changes in compensation levels and/or benefits. (*Id.*) However, Horizon acknowledges that staffing redundancies could potentially result in limited downsizing of back-office and/or managerial level personnel. (*Id.*) TBL Group states that it is contemplated that Mr. Harris, the Chief Executive Officer of Horizon, will continue as an employee of the business for some period of time after completion of the transaction, thus further assuring a smooth transition of the business. (*Id.*)

TBL Group states that there is strong demand for passenger surface transportation in Horizon's service area due to both past and expected future

population and economic growth in the Augusta Metropolitan Area. (*Id.* at 13.) According to the application, Horizon currently competes directly with many other charter bus service providers within Horizon's service area, including providers such as Capital Tours, Lewis Bus Line, SC Coach LLC, and SC Express LLC. (*Id.* at 13–14.) In addition to direct competition with other charter service providers, the application states that there are a growing number of charter bus brokerage companies (companies that arrange transportation and charter services), including Augusta Charter Bus Company, CharterUp, Falcon Charter Bus, GoGo Charters, and National Charter Bus, that compete with all of the charter service providers. (*Id.* at 14.) In addition, TBL Group states that Horizon and all other similar surface passenger service providers also compete with scheduled passenger shuttle services in certain areas and the passenger transportation network providers (e.g., Uber and Lyft). (*Id.*)

TBL Group also notes that Horizon's service area is geographically dispersed from service areas of the Affiliated Regulated Carriers, and there is no known overlap in customer bases between the Affiliated Regulated Carriers and Horizon. (*Id.*) The Board has also considered the geographic areas of the carriers TBL Group has recently obtained authority to acquire but where the acquisitions have not been consummated. As noted above, TBL Group obtained authority in Docket No. MCF 21152 to acquire Escot. (*See id.* at 2 n.3.) According to that docket, Escot provides scheduled intercity transit service within various states, including Georgia, under the FlixBus mobility platform, but Escot's primary service area appears to be central Florida. *See TBL Group, Inc.—Acquis. of Control—Escot Bus Lines, L.L.C.*, MCF 21152, slip op. at 2–3. Horizon, on the other hand, primarily serves Augusta, and it therefore appears that any overlap between Horizon and Escot is minimal. Additionally, both companies face competition from third parties. Neither of the other carriers in the authorized but unconsummated acquisitions operate in the geographic areas served by Horizon.

Based on TBL Group's representations, the Board finds that the transaction proposed in the application is consistent with the public interest. The application will be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to

³ Horizon is an authorized intrastate passenger motor carrier in the states of Georgia and South Carolina and has a Safety Rating of Satisfactory. (*Id.*)

reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective December 15, 2026, unless opposing comments are filed by December 14, 2026. If any comments are filed, TBL Group may file a reply by December 28, 2026.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

5. This notice will be published in the **Federal Register**.

Decided: October 26, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2026–22035 Filed 10–28–26; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36932]

Channel Pacific Railroad—Operation Exemption—In West Sacramento, Yolo County, Cal.

On May 12, 2026, Channel Pacific Railroad (CHPR), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 2,132 feet of track (the Line) located in a terminal facility (the Facility) in West Sacramento, Yolo County, Cal. Notice of CHPR's exemption was served and published in the **Federal Register** on May 28, 2026 (91 FR 31318) (*May 28 Notice*), and the notice became effective on June 11, 2026.

On July 31, 2026, the City of West Sacramento, Cal., and the Sacramento-

Yolo Port District (together, the Sacramento-area Government Entities or SGEs) filed a petition to reject the verified notice, revoke the exemption, or declare the exemption void ab initio (the Petition).¹ CHPR filed a reply to the Petition on August 20, 2026 (Reply). For the reasons discussed below, the Board will decline to institute a revocation proceeding and deny the Petition. Pursuant to 49 U.S.C. 10502(d), the Board's decision will be published in the **Federal Register**.

Background

The Line consists of two tracks that begin at a point of connection with a rail line owned by Union Pacific Railroad Company (UP) at the northern boundary of the Facility, immediately south of Channel Drive, and extends southward to ending points immediately north of the Sacramento River Deep Water Ship Channel.² (Verified Notice 3; *see id.*, Ex. A (map).) The Line has no mileposts and is owned by CHPR's noncarrier corporate affiliate, Greencycle Properties, LLC (Greencycle).³ (Verified Notice 1.)

According to the verified notice, CHPR and Greencycle have agreed that CHPR would "acquire the right to conduct railroad common carrier service over" the Line and that CHPR would "assume responsibility for the provision of associated commodity-handling and transloading services within" the Facility. (*Id.* at 2.) CHPR asserts that it is leasing the Line and Facility from Greencycle under a lease effective July 1, 2026. (Reply 26–27.) CHPR states that it will deliver "comprehensive, railroad-oriented transportation services within" the Facility, "including, among other things, the inbound and outbound transportation of railroad-borne shipments." (Verified Notice 2–3; *see* Reply 11–12 (describing its intended services package to involve "comprehensive transload and logistics services," including "[t]he offloading, temporary storage, and reloading of bulk commodities into motor carriers for local distribution").) CHPR further asserts that it has "communicated its short line operations plans with UP" and that UP has indicated willingness

"to coordinate with CHPR on its common carrier implementation and subsequent operating plans." (Verified Notice 4; *see* Reply 13 (noting that CHPR and UP executed a formal interchange agreement, effective July 14, 2026).)

The *May 28 Notice* provided that petitions for stay were due by June 4, 2026; no stay requests were filed. By decision served June 10, 2026 (*June 10 Decision*), the Board waived the 60-day advance notice requirement under 49 CFR 1150.32(e) and established that CHPR's exemption would become effective on June 11, 2026.

On July 31, 2026, the SGEs filed the Petition, arguing that the Board should reject the verified notice, revoke the exemption, or declare the exemption void ab initio. On August 20, 2026, CHPR replied to the petition.

Preliminary Matter

On September 8, 2026, the SGEs filed a request for leave to file a rebuttal to CHPR's reply. In the filing, the SGEs assert, among other things, that the reply contains factual inaccuracies and is misleading. On September 23, 2026, CHPR filed an opposition to the SGEs' request for leave. The Board's rules do not permit a reply to a reply, *see* 49 CFR 1104.13(c),⁴ and the SGEs' filing, which they characterize as a "limited rebuttal," largely repeats or expands on arguments and information presented in the Petition. Accordingly, the SGEs' request for leave to file a rebuttal will be denied.

Discussion and Conclusions

As noted above, CHPR's notice of exemption has already become effective, with no party having sought a stay of the effective date. Because the exemption is already in effect, the Petition—which seeks rejection and revocation—will be treated as a petition to revoke. *See Middletown & N.J. R.R.—Lease & Operation Exemption—Norfolk S. Ry.*, FD 35412, slip op. at 2 n.1 (STB served Dec. 23, 2010). Pursuant to 49 U.S.C. 10502(d), "an already-effective exemption may be revoked, in whole or in part, if regulation is necessary to carry out the [Rail Transportation Policy (RTP)] of 49 U.S.C. 10101." *Mid-Atl. Gateway LLC—Lease & Operation Exemption—Certain Rail Line Assets of J.P. Rail, Inc.*, FD 36644, slip op. at 2 (STB served Feb. 15, 2023).

¹ The Petition is styled both as a petition "to reject or revoke exemption," (Pet. 1), and a petition "to revoke exemption pursuant to 49 U.S.C. 10502(d) or declare exemption void ab initio pursuant to 49 CFR 1150.42(c)," (*id.* at 2).

² CHPR states that a third track, which is excluded from the linear footage of the Line, will be spur track pursuant to 49 U.S.C. 10906. (Verified Notice 3; *see id.*, Ex. A (map).)

³ According to CHPR, it and Greencycle are both controlled by Teichert Inc. (Teichert), a noncarrier that does not own any other rail carriers. (Verified Notice 1.)

⁴ As a general matter, to promote the orderly and efficient administration of cases, the Board is more strictly enforcing 49 CFR 1104.13(c). *Kan. & Okla. R.R.—Lease & Operation Exemption with Interchange Commitment—Union Pac. R.R.*, FD 36849, slip op. at 7 (STB served Mar. 20, 2026) (citing *Sunflower State Indus. Ry.—Pet. for Declaratory Ord.*, FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025)).

Furthermore, “[t]he Board shall, within 90 days after receipt of a request for revocation . . . determine whether to begin an appropriate proceeding.” 49 U.S.C. 10502(d). If it “decides not to begin a proceeding,” the Board must publish “the reasons for the decision” in the **Federal Register**. *Id.*

“A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the” RTP. *TGS Cedar Port R.R.—Operation Exemption—in Chambers Cnty., Tex.*, FD 36627, slip op. at 3 (STB served Apr. 1, 2024) (quoting *Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa*, FD 34867, slip op. at 4 (STB served June 15, 2007)) (denying petition to revoke); *see* 49 U.S.C. 10502(d). An exemption under 49 CFR part 1150 subpart D is void ab initio if the verified notice of exemption contains false or misleading information that is material to the authorization process. *TGS Cedar Port R.R.*, FD 36627, slip op. at 3 (citing 49 CFR 1150.32(c); *Berkshire Scenic Ry. Museum, Inc. v. ICC*, 52 F.3d 378, 381 (1st Cir. 1995)). The “[f]ailure to disclose material information can render a notice misleading by omission.” *Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC*, FD 35984, slip op. at 3 (STB served Apr. 1, 2016) (citing *U S Rail Corp.—Lease & Operation Exemption—Shannon G., a N.J. LLC*, FD 35042 (STB served Oct. 8, 2008)). Information is material if the transaction would not otherwise have qualified for an exemption. *TGS Cedar Port R.R.*, FD 36627, slip op. at 3 (citing *Berkshire*, 52 F.3d at 381). Additionally, in considering whether a statement is misleading, “the relevant question is whether the Board itself has been materially misled.” *Id.* (citing *Snohomish Cnty., Wash. v. STB*, 954 F.3d 290, 303 (D.C. Cir. 2020)).

As discussed below, the SGEs argue that the exemption should be declared void ab initio or revoked because the verified notice is misleading, CHPR is not prepared to operate as a common carrier, and the circumstances are too complicated for the class exemption process. The Board addresses these arguments in turn below.

Request To Declare Exemption Void Ab Initio

Alleged omissions and misstatements. According to the SGEs, CHPR omits material information from the verified notice and presents other material information in a misleading manner, “which appear to have been intended to

mask the full scope of the owners’ activities,” rendering the verified notice void ab initio. (Pet. 3.) The SGEs assert that the verified notice refers to the Facility as a railroad-served “terminal complex” but fails to discuss how “one of the primary activities at the site would be transfer of petroleum product from ships to storage tanks” and then from storage tanks to trucks. (*Id.* at 5; *see also id.* at 9–10 (arguing that the verified notice omitted details about plans for receiving asphaltic oil via maritime shipments, making related infrastructure developments, and negotiating a dock lease).) The SGEs further criticize CHPR’s filing for not discussing plans to repurpose the Facility’s existing chemical storage tanks to accommodate asphaltic oil storage (*see, e.g., id.* at 3), and claim that CHPR’s intended operations are not “a typical rail to truck transload operation” because the “loading of trucks activity will physically occur over 300 feet from the rail spur,” (*id.* at 12). The Petition also describes interactions between the SGEs and Teichert personnel since August 2025 concerning anticipated operations at the Facility (including rail) and attaches correspondence related to such plans and related permitting issues. (*See, e.g., id.* at 2–4, 6–8, 10–11; *id.*, Exs. B, E.)

The SGEs further assert that the verified notice should have explained that Greencycle is the only entity with “physical access to the rail lines,” which, according to the SGEs, makes Greencycle the only possible shipper (*id.* at 5⁵), but that CHPR instead uses terminology that “might invoke images of a multi-tenant rail park or a logistics park,” (*id.* at 11). According to the SGEs, Greencycle “is merely a rail served customer of” UP (*id.* at 6), and CHPR’s activities will occur “behind the gate” (or fence) at the Facility (*id.* at 4; *see id.* at 6, 12, 13, 14).⁶ The SGEs also take issue with the verified notice’s description of the track as “2,132 linear feet” without clarifying, in text, that the total embraces three segments of track (one 985-foot track, one 897-foot track, and a 250-foot connector track). (*Id.* at 5.) Additionally, the SGEs suggest that CHPR’s projection of \$5 million in annual operating revenues “refers to

⁵ The SGEs claim that “there are no other rail customers involved, nor can there be unless Greencycle sells parcels of its property to other entities who might be served by” CHPR. (Pet. 12.)

⁶ According to the SGEs, a closed gate and/or fence runs across the tracks at the Facility. (*See* Pet. 12 (citing Pet., Ex. F (photos dated July 17, 2026)).) The SGEs similarly describe the Facility’s prior owner as “a behind the fence shipper facility that was rail served by” UP. (*Id.* at 13.)

revenues from sales of asphalt,” not rail transportation. (*Id.* at 14.)

In response, CHPR argues that its verified notice provides what is required under the regulations: an accurate description of “the lines of railroad that would become the subject to the proceeding.” (Reply 9 (emphasis omitted) (citing 49 CFR 1150.33(e)(3)–(4)).) CHPR asserts that “an exhaustive, granular inventory of . . . ancillary transportation infrastructure” is not required by the regulations. (*Id.* at 9.) CHPR also argues that its negotiations for a river dock lease and the repurposing of storage tanks have “no bearing on” the exemption criteria here, which focus on “the relevant transaction elements—specifically, the acquisition of operating rights over the track and the commitment to provide common carrier service over them.” (*Id.* at 10.) CHPR further argues that the Board should reject the SGEs’ suggestion that the filing falsely “implied direct, side-by-side rail-to-truck transloading” despite the 300-foot distance between the truck bay and the rail spur. (*Id.* at 14 (citing Pet. 12).) According to CHPR, the verified notice made no such representations, such details would not have affected the validity of the exemption, and CHPR’s plans regarding transfer of commodities are standard for multimodal logistics providers. (*Id.*)

CHPR further states that its description of the site as a “terminal complex” was accurate because the Facility will function as “a multimodal transload terminal,” with CHPR “receiving asphaltic oil via multiple modes (rail and ship), storing it in tanks, and transferring it to tanker trucks for distribution to off-site asphalt plants.” (*Id.* at 9–10; *see* Verified Notice 2, 3.) CHPR avows that the Facility “can and will be made available to other customers” beyond Greencycle and that CHPR is fully aware of—and “steadfast[ly] commit[ted]” to fulfilling—its common carrier obligation. (Reply 12; *see id.* at 23–24.) CHPR further asserts that it is standard practice for rail customers to use terminal facilities for transloading “using available ground space” without any need for an on-site real estate footprint or intermediate storage. (*Id.* at 27, 28.⁷) Additionally, CHPR states that

⁷ CHPR asserts that if any customers require intermediate storage, it is possible to provide that “without triggering California subdivision laws,” as the SGEs appear to suggest. (Reply 28; *see* Pet. 12.) According to CHPR, “customers can contract for the throughput of asphaltic oil via” the existing storage tanks, or they could “execute simple facility lease agreements for the large on-site warehouse or individual storage tanks to accommodate

the verified notice accurately describes the length of the Line (*id.* at 14–15), and that its projection of annual operating revenues exceeding \$5 million is “a good-faith estimate of the revenues to be generated from the comprehensive railroad services package CHPR will provide,” (*id.* at 11; *see id.* at 12 (stating that the estimate reflects the “comprehensive scope of projected common carrier logistics services”)). CHPR represents that the figure did not account for the sale of the commodity as “CHPR will merely transport and handle asphaltic oil for a charge; it will not be the beneficial owner of it.” (*Id.*)

The information that the SGEs claim is either misleading or omitted from the verified notice is not material because it does not bear on the exemption criteria. (*See, e.g.,* Reply 9–10.) The Board’s regulations require a notice of exemption to include “[a] brief summary of the proposed transaction.” 49 CFR 1150.33. CHPR’s verified notice met this requirement. The information about CHPR’s operations that the SGEs argue was omitted or misleading—such as CHPR’s plans to facilitate maritime shipments (in addition to rail) or repurpose storage tanks and the distance between the rail spur and truck loading—are not required by the regulation. Additionally, the verified notice’s description of the Facility as a “terminal complex” (or “railroad-served terminal facility”) was not misleading, as it appears to reflect CHPR’s plans for rail service. (Verified Notice 2, 3.) Furthermore, as discussed below, CHPR has verified that it has prospective third-party customers. (*See* Reply 28–29.) The Board also does not take issue with CHPR’s description of the track as 2,132 linear feet, particularly in light of the verified notice’s map depicting the segments of track (*see* Verified Notice 3; *id.*, Ex. A (map depicting a “track 1” and a “track 2” as 897 and 985 feet, respectively, with a 250-foot “connector track,” and a “track 3 spur track” as 709 feet)), and the SGEs have provided no basis for the Board to find that CHPR’s “good-faith estimate” of anticipated revenues was false or misleading.

Alleged lack of readiness or intention to commence common carrier operations. The SGEs contend that CHPR is not a legitimate rail carrier and that it is seeking operating authority “to take advantage of the preemptive authority of the Board’s jurisdiction . . . and avoid certain state and local land use regulations.” (Pet. 4; *see id.* at 3, 4–

5.) The SGEs also claim that a lack of preparation for common carrier operations by CHPR indicates that it does not intend to provide common carrier service. The SGEs assert that “[i]nstead of . . . an interchange agreement with Union Pacific, as one would expect from a short line railroad, [CHPR] apparently has only an industry track agreement with Union Pacific, which is what one would expect of a typical rail served customer.” (*Id.* at 6 (citing *id.*, Ex. B at 5 (August 2025 letter from Teichert’s attorney to City of West Sacramento noting that Teichert had “entered into a track licensing agreement with [UP] for ongoing rail service” at the Facility))). The SGEs also question CHPR’s intentions by asserting that there are no discernable locomotives or rail equipment in place yet at the Facility (*id.* at 12–13), CHPR is not listed on UP’s website as a short line that it connects with (*id.* at 8, 13), and CHPR does not yet have an official Standard Carrier Alpha Code (SCAC) identifier (*id.* at 8, 13).

In its reply, CHPR acknowledges that it sought common carrier authority in part to address “the community’s attempts to ‘regulate’ away the Terminal’s historic access to the interstate network.” (Reply 23.) CHPR argues, however, that it is not problematic for it to consider preemption in invoking the Board’s common carrier authorization processes (*id.* at 23), and that it is “a lawful prerogative, provided the entity assumes the actual, objective obligations of a common carrier], as CHPR pledges to do,” (*id.* at 24). CHPR also responds with a detailed description of its preparations to provide common carrier service. (*Id.* at 12–14, 25, 26, 28–29.)

The Board’s regulations and precedent do not require CHPR to have all operating assets and administrative arrangements in place prior to seeking common carrier operating authority. *See Townline Rail Terminal, LLC—Constr. & Operation Exemption—in Suffolk Cnty., N.Y.*, FD 36575 (STB served Nov. 15, 2023) (denying motion to dismiss petition for exemption and rejecting argument that the exemption filer’s “failure to provide evidence that it ha[d] entered into an interchange agreement with [railroad] indicates [filer] would not be a rail carrier”); *Mid-Atl. Gateway LLC*, FD 36644, slip op. at 2 (“The grant of the exemption here does not require the parties to complete the transaction, and revoking the exemption is not necessary simply because the parties have not reached a final agreement to go forward.”). The verified notice states that CHPR was in communication with UP about its intended short line

operations (*see* Verified Notice 4), and CHPR explains that it and UP now have executed a formal interchange agreement and have continued discussions regarding interline service (Reply 13 (stating that the parties “are forging ahead with other interline service arrangements consistent with UP’s acceptance of CHPR’s intended common carrier status”); *id.* at 26 (referring to “active, ongoing commercial discussions regarding the handling of traffic in interline service” and asserting that “UP has been highly receptive here”)).

Further, CHPR has pledged that it “will acquire the administrative identifiers and operational assets in the ordinary course of business as it acts upon its permissive authority,” (Reply 13–14), and indicates that it has been making progress on those efforts since the exemption took effect (*id.* at 25 (asserting that it is in the process of obtaining SCAC registration, developing common carrier tariffs, and coordinating with the Railroad Retirement Board)); *see Riverview Trenton R.R.—Pet. for Exemption from 49 U.S.C. 10901 to Acquire & Operate a Rail Line in Wayne Cnty., Mich.*, FD 34040, slip op. at 3–4 (STB served Nov. 30, 2007) (carrier’s delay in beginning operations was not a basis to revoke the exemption where it was taking “steps . . . to restore rail service” and appeared to “remain[] committed to instituting the proposed rail service”). Moreover, CHPR has repeatedly affirmed that it “fully understands its statutory obligations to hold itself out to the public as a common carrier” and that it “stands ready” to provide its services and Facility access to third parties upon reasonable demand. (Reply 12; *see id.* at 3, 23–24, 26); *Townline Rail Terminal, LLC*, FD 36575, slip op. at 4–5 (STB served Nov. 15, 2023) (referring to exemption filer’s repeated statements “that it would offer common carrier rail service to the public for compensation”). CHPR has also represented that after it announced its plans to commence common carrier service, prospective third-party customers “promptly came forward seeking opportunities to transload additional, non-asphalt commodities,” which it states demonstrates “a plausible local need” for its intended services. (Reply 28–29.) The SGEs have not provided the Board with any basis to discredit these sworn statements.⁸

Finally, to support their argument that CHPR is not a rail carrier, the SGEs primarily rely on the Board’s decision in

⁸ CHPR’s reply includes a sworn verification from its Vice President (Reply 61.)

completely different rail-borne products.” (Reply 28.) CHPR states that it is “in preliminary discussions with third-party construction companies to provide exactly these services.” (*Id.*)

Hi Tech Trans, LLC—Petition for Declaratory Order—Newark, N.J., FD 34192 (Sub-No. 1), slip op. at 5 (STB served Aug. 14, 2003) (transloading activities not within the Board's jurisdiction where, among other things, activities were "not performed by a rail carrier or under the auspices of a rail carrier holding itself out as providing those services"). However, *Hi Tech* is not applicable. Unlike the third-party transloader there, which operated a transloading facility located on a rail carrier's property and was not itself a rail carrier, CHPR has stated that it will hold itself out to the public as a rail carrier and has sought operating authority to do so.⁹

Therefore, the Board finds that CHPR did not materially mislead the Board or omit material information and will deny the SGEs' request to declare the exemption void ab initio.

Request To Revoke Exemption

The SGEs claim that even if the Board does not conclude that the verified notice was deliberately false or misleading, the Petition shows that "the Board did not fully understand the situation on the ground when it issued its decision" and that this is "not a simple or straightforward transaction." (Pet. 15; *see id.* at 19 (stating that the "circumstances concerning these so-called new railroad operations are too complicated to be handled in a notice of exemption").) Accordingly, they claim that "it would be proper for the Board to . . . revoke the exemption." (*Id.* at 15.) CHPR responds that the SGEs have failed to demonstrate that regulating CHPR would advance or support the RTP objectives. (Reply 15.)

However, the SGEs have not demonstrated that regulation is necessary to carry out the RTP. *See* 49 U.S.C. 10502(d); 49 CFR 1121.4(f)

⁹The Board has revoked exemptions where there was specific evidence indicating that a transaction was merely a sham to preempt state or local condemnation actions and the record raised significant doubt as to whether the exemption-holder ever intended to initiate rail service. *See, e.g., Milwaukee Ind. Trade Ctr., LLC—Acquis. & Operation Exemption—Line Owned by Milwaukee Ind. Trade Ctr., LLC*, FD 35133, slip op. at 7–8 (STB served June 16, 2010); *Jefferson Terminal R.R.—Acquis. & Operation Exemption—Crown Enters., Inc.*, 5 STB 461, 465 (2001). Here, that is not the case. Even though CHPR may have "sought common carrier status in part" to obtain preemption, there is no specific evidence on the record that its efforts to serve as a common carrier are not legitimate and thus there is no basis here for the Board to find that the verified notice was void ab initio or to revoke the exemption. Accordingly, while CHPR's failure to disclose the existence of its dispute with the SGEs was not materially misleading, earlier disclosure could have allowed the Board to address this concern more expeditiously.

("[t]he person seeking revocation has the burden of showing that the revocation criteria of 49 U.S.C. 10502(d) have been met"). As CHPR points out, the SGEs have not asserted that regulation is necessary to carry out the RTP or otherwise tried to show that CHPR's operations will harm the national rail network, threaten competitive service, or harm shippers. (Reply 15.) Accordingly, the Board will decline to revoke the exemption on the basis that regulation is necessary to carry out the RTP.

For the reasons set forth above, the Petition will be denied, and accordingly, the Board will not institute a proceeding under 49 U.S.C. 10502(d).

It is ordered:

1. The Board declines to institute a proceeding under 49 U.S.C. 10502(d).
2. The Petition is denied.
3. The SGEs' request for leave to file a rebuttal is denied.
4. This decision will be published in the **Federal Register**.
5. This decision is effective on its date of service.

Decided: October 27, 2026.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

Zantori Dickerson,

Clearance Clerk.

[FR Doc. 2026–22090 Filed 10–28–26; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request for Disposal of Airport Property at the Kingman Airport, Kingman, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Notice is being given that the FAA is considering a request from the City of Kingman to release 832.6 (+/–) acres of federally obligated airport property at the Kingman Airport (IGM), Kingman, AZ. This acreage was obtained from the United States Government under the Surplus Property Act of 1944. The release of property will allow the City of Kingman to dispose of the property for non-aeronautical purposes.

DATES: Comments must be received on or before November 27, 2026.

ADDRESSES: Documents are available for review at the Kingman Airport, 7000 Flightline Dr., Kingman, AZ 86401, and the FAA Airports District Office, 3800 N

Central Ave., Suite 1025, Phoenix, AZ 85012. Written comments on the Sponsor's request must be delivered or mailed to: Kyler Erhard, Manager, Phoenix Airports District Office, 3800 N Central Ave., Suite 1025, Phoenix, AZ 85012.

FOR FURTHER INFORMATION CONTACT:

Kyler Erhard, Manager, Phoenix Airports District Office, 3800 N Central Ave., Suite 1025, Phoenix, AZ 85012, 602–797–2810.

SUPPLEMENTARY INFORMATION: The subject property is an undeveloped, irregularly shaped 790-acre parcel owned by the City of Kingman. It is situated east of U.S. Highway 66 and directly adjacent to the west and south sides of IGM. The surrounding area includes commercial and light industrial development to the west, Kingman Airport and Airport Industrial Park to the north, and vacant land to the south and east. Additionally, the site borders a Burlington Northern and Santa Fe Railway (BNSF) mainline, providing options for rail-served parcel development. The land directly borders the airport's airside and landside facilities, separated only by a perimeter fence. Historically, this property was utilized to store surplus aircraft following World War II. An additional 42.6 acres is included in this release request to reflect the land required for the proposed Flying Fortress Parkway, which bisects the subject property. The property will be sold to the City at the Fair Market Value (FMV) which has been determined to be \$8,000,000. Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Authority for the Policy: This notice is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, Section 47107(h)(2).

Issued in Phoenix, AZ, on October 27, 2026.

Kyler Erhard,

Manager, Phoenix Airports District Office.

[FR Doc. 2026–22095 Filed 10–28–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Rule on a Land Release Request for Disposal of Airport Property at the Fairbanks International Airport, Fairbanks, AK**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Notice is being given that the FAA is considering a request from the Fairbanks International Airport to release 40 (±) acres of federally obligated airport property at the Fairbanks International Airport, Fairbanks, Alaska. This acreage was acquired with federal financial assistance via Airport Improvement Program Federal Grants. The release of property will allow the Fairbanks International Airport to dispose of the property for non-aeronautical purposes.

DATES: Comments must be received on or before November 30, 2026.

ADDRESSES: Documents are available for review at the Fairbanks International Airport, 6450 Airport Way, Fairbanks, AK 99709, and the FAA Airports District Office, 222 W 7th Avenue, Anchorage, AK 99513. Written comments on the Sponsor's request must be delivered or mailed to: Nathaniel Zacharzewski, Leasing Specialist, Fairbanks International Airport, 6450 Airport Way, Fairbanks, AK 99709.

FOR FURTHER INFORMATION CONTACT: Molly Fierro, Compliance Specialist, Alaskan Regional Office, Federal Aviation Administration, 222 W 7th Ave., Anchorage, AK 99513.

SUPPLEMENTARY INFORMATION: The property is located northwest of South Vanhorn and 5th Wheel Streets. The anticipated use of the property will be to facilitate expansion of a privately owned gravel mining company. The parcel is currently depicted on the approved Airport Layout Plan as undeveloped property with no planned aeronautical development. The property will be released of its federal obligations given the land is no longer required by the Fairbanks International Airport for aeronautical purposes. The property will be sold at the Fair Market Value (FMV) based on appraisal. Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Authority for the Policy: This notice is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, Section 47107(h)(2).

Issued in Anchorage, AK, on October 20, 2026.

Laurie J. Suttmeier,

Director, Alaska Airports District Office.

[FR Doc. 2026-22098 Filed 10-28-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

[Docket No. FRA-2026-1585]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 14, 2026, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received one comment in response to the notice.

DATES: Interested persons are invited to submit comments on or before November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find the particular ICR by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: (757) 897-9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 14, 2026,

FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. See 91 FR 52778. FRA received one comment summarized below, related to the proposed collection of information.

FRA received an anonymous comment to the 60-day notice requesting "detailed, empirical justifications" for the reduced burden estimate for safety outreach and the reduced number of inadequate safety performance (ISP) railroads. The commenter also requested that FRA explain how the absorbed Fatigue Risk Management Program (FRMP) burdens align with rail carrier administrative workflows. FRA acknowledges the commenter's concern about the revised estimates and provides the following additional explanation. This explanation is qualitative in nature because FRA's revised estimates of future paperwork burdens correct a categorical over-inclusion of certain activities. FRA is also addressing an anonymous comment submitted to another ICR involving FRA's System Safety Program (SSP) regulation, which requested clarification as to why FRA was reducing the number of ISP railroads and appears to have been submitted by mistake to the docket for the SSP ICR (FRA-2026-0039-0001). This second comment repeats many of the same ISP concerns as the comment to the Risk Reduction Program (RRP) ICR, but also specifically asks FRA to explain why it determined 13 previously designated ISP operations no longer meet the criteria.

As explained in the 60-day notice, FRA determined that the previous burden for safety outreach was over-estimated because it included burdens already accounted for in the rulemaking economic analysis, such as the cost and time associated with developing a safety outreach program and developing outreach materials to be used for educating and training employees on RRP safety information relevant to their job. Employee training is generally not a paperwork burden subject to the PRA, and FRA's downward revision does not reflect any substantive change in FRA's expectations regarding railroad safety outreach activities. Rather, the revised estimate accurately isolates the actual administrative paperwork burdens that do fall under the PRA, such as time spent maintaining outreach materials, preparing briefings, revising and updating content, and the ongoing management of the program itself.

Regarding the reduced number of ISP railroads, the revised estimate accurately and transparently reflects

that FRA has identified fewer ISP railroads than initially estimated. It does *not* reflect that FRA has determined that 13 previous ISP railroads are no longer ISP, which is a concern raised by the comment submitted to the SSP ICR. The revised estimate also does not reflect any change in FRA enforcement discretion, but merely estimates the future number of ISP railroads based on FRA's experience implementing the overall RRP rule. For example, the lower-than-expected number of ISP railroads is due in part to a corresponding increase in the number of railroads that proactively volunteered to comply with the RRP rule, as provided for in 49 CFR 271.15. Specifically, the information collection notice highlights that while the estimated number of ISP railroads decreased from 15 to 2, the estimated number of voluntarily compliant railroads concurrently increased from 0 to 10. The decrease in the estimated number of ISP railroads is, therefore, substantially offset by the increase in the estimated number of voluntarily compliant railroads. FRA will reevaluate its estimates for the number of ISP and voluntarily compliant railroads during the next ICR renewal cycle to ensure that future burden estimates continue to be accurate and transparent.

Finally, the incorporation of FRMP hours into this ICR does not shift administrative tasks into uncompensated operational overhead; rather, it is an administrative action to more effectively manage FRA's paperwork collections. Because the two programs are legally and operationally intertwined, FRA consolidated the burden hours previously reported under OMB Control Number 2130-0633 into the central RRP ICR (OMB Control Number 2130-0610). The consolidated table explicitly accounts for all recurring FRMP administrative workflows, allocating specific, compensated burden hours for the development of new FRMP plans, analysis of fatigue risk, mitigation strategies, implementation evaluation, consultation with affected employees, initial review meetings with FRA, and subsequent plan amendments.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b) and (c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). The 30-day notice informs the regulated community of their opportunity to file relevant

comments and affords the agency adequate time to consider public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Risk Reduction Program.

OMB Control Number: 2130-0610.

Abstract: In 2020, FRA issued a final rule¹ that requires each Class I freight railroad and each freight railroad with ISP to develop and implement an RRP to improve the safety of its operations. Other railroads may also voluntarily comply with the RRP rule by establishing and implementing an RRP meeting the regulatory requirements.² A railroad that volunteers for RRP must continue to comply with the rule's requirements for a minimum period of five years.³

An RRP is a comprehensive, system-oriented approach to safety that determines a railroad operation's level of risk by identifying and analyzing applicable hazards, and develops plans to mitigate, if not eliminate, that risk. An RRP must also include an FRMP component, as required by a final rule FRA issued in 2022.⁴ The purpose of an FRMP is to improve railroad safety through structured, systematic, and proactive processes and procedures that a railroad develops and implements to identify and mitigate the effects of fatigue on its employees.⁵ The information collected under this regulation will be used by railroads, and FRA, to improve safety through

structured, proactive processes that systematically evaluate railroad safety hazards on their systems and manage the risks associated with those hazards to help reduce the number and rates of railroad accidents/incidents, injuries, and fatalities. Each railroad has flexibility to tailor an RRP to its specific railroad operations. Each railroad must implement its RRP under a written, FRA-approved RRP plan and conduct an annual internal assessment of its RRP, with FRA also auditing railroads' RRP.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: Businesses (Railroads).

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 426.

Total Estimated Annual Burden: 31,192 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$2,812,135.77.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Christopher S. Van Nostrand,

Deputy Chief Counsel.

[FR Doc. 2026-22069 Filed 10-28-26; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2026-0039]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 14, 2026, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received two comments in response to the notice.

¹ 85 FR 9262 (Feb. 18, 2020).

² 49 CFR 271.15 and 49 U.S.C. 20156(a)(4).

³ 49 CFR 271.15.

⁴ 87 FR 35660 (June 13, 2022).

⁵ 49 CFR 271.603.

DATES: Interested persons are invited to submit comments on or before November 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find the particular ICR by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 14, 2026, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. See 91 FR 52776. FRA received two comments summarized below, related to the proposed collection of information.

FRA received two anonymous comments to the 60-day notice. One of these comments appears to have been submitted to this docket inadvertently because it relates to a separate 60-day notice for FRA’s risk reduction program (RRP) regulation that was published on the same day. FRA is addressing this comment’s RRP concerns within the appropriate RRP 30-day notice that will be posted in docket no. FRA–2026–1585.

The second comment submitted to the system safety program (SSP) 60-day notice asked about: (1) operational assumptions FRA used to estimate that a passenger rail operation can complete an SSP internal assessment in 2 hours; (2) how FRA will ensure that absorbing Fatigue Risk Management Program (FRMP) reporting into this ICR does not obscure specific, tracked compliance hours and resource allocations dedicated to fatigue mitigation; (3) how FRA reconciles the reduced number of estimated new start passenger rail operations with recent funding grants expanding intercity and passenger rail corridors; and (4) whether wage rates utilized in table footnote 5 accurately capture full labor costs of specialized systems safety engineers, fatigue experts, and legal compliance personnel required to execute risk-based hazard analyses.

While responding to each of these questions in more detail below, FRA notes that PRA estimates only encompass specific paperwork burdens and are not estimates of the complete compliance costs associated with the SSP regulation, which were quantified in a separate rulemaking impact analysis. Further, PRA burden estimates are not meant to be interpreted as a tracked requirement for how much time a railroad must spend on a specific task—rather, they are merely estimates meant, in part, to assist FRA in minimizing paperwork burdens and costs resulting from the collection of information. See, e.g., 44 U.S.C. 3501.

Internal Assessment Time: The 2-hour estimated PRA burden for the internal assessment requirement only encompasses the associated paperwork burdens, and not the complete costs of compliance with the internal assessment requirement. For example, the estimate reflects the administrative burden of documenting and reporting the internal assessment, not necessarily the entirety of all associated activities (e.g., tasks related to assessing whether the SSP is implemented fully and goals are being met). The 2-hour estimate for paperwork burdens associated with the annual SSP internal assessments is paired with an additional 2-hour estimate for the chief safety official’s certification of those results.

Consolidation of FRMP Requirements: FRA is integrating the FRMP burden hours previously reported under OMB Control Number 2130–0633 into the primary SSP information collection (OMB Control No. 2130–0599) to manage its ICRs more effectively. Consolidating these collections does not obscure FRMP compliance hours, and the consolidated table explicitly accounts for all recurring FRMP administrative workflows, allocating specific, compensated burden hours for the development of new FRMP plans, analysis of fatigue risk, mitigation strategies, implementation evaluation, consultation with affected employees, initial review meetings with FRA, and subsequent plan amendments.

Passenger Rail Operation Growth Estimates: FRA revised its estimate of new passenger rail operations from one annually to one over the upcoming three-year ICR period. While federal funding continues to support intercity and passenger rail expansion, this adjusted estimate reflects the current baseline decrease in total passenger rail operations from 33 to 32, and the extended timelines typically required for new operations to commence service. FRA will reevaluate its estimated number of new passenger rail

operations during the next ICR renewal cycle to determine whether it should be increased.

Wage Rate Methodology for Hazard Analyses: The wage rates utilized in the burden table are derived directly from the 2024 Surface Transportation Board Full Year Wage A&B data series. FRA utilized the hourly wage rate of \$51.54 for employee group 200 (Professional & Administrative), heavily weighted with a 75 percent overhead burden to total \$90.19 per hour. For executive oversight, FRA utilized the hourly wage rate of \$69.27 for employee group 100 (Executives, Officials, & Staff Assistants), also burdened with a 75 percent overhead to total \$121.22 per hour. These standardized classifications are approved methodologies for federal ICR burden estimates and are appropriate for the specialized personnel who will be performing SSP-related activities.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days’ notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b) and (c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983 (Aug. 29, 1995). The 30-day notice informs the regulated community of their opportunity to file relevant comments and affords the agency adequate time to consider public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: System Safety Program.

OMB Control Number: 2130–0599.

Abstract: In 2020, FRA issued a final rule¹ that requires each passenger rail operation to develop and implement an SSP to improve the safety of its operations. Each passenger rail operation must use its SSP to proactively identify and mitigate or eliminate railroad safety hazards and the resulting risk on its system to reduce the number of railroad accidents, incidents, and associated injuries, fatalities, and property damage. An SSP must also include an FRMP component, as required by a final rule FRA issued in 2022.² The purpose of an FRMP is to improve railroad safety through structured, systematic, and proactive processes and procedures that a railroad develops and implements to identify and mitigate the effects of fatigue on its employees.³

A passenger rail operation has the flexibility to tailor an SSP to its specific operations. An SSP must be fully implemented within 36 months of FRA's approval of a submitted SSP plan. Under the SSP regulation, FRA will audit a passenger rail operation's compliance with its SSP plan and will use the information collected to ensure compliance with the regulation.

FRA uses the information collected to help ensure that passenger rail operations establish and implement SSPs to improve the safety of their operations and to confirm compliance with the rule.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 32 passenger rail operations + 1 new passenger rail operation.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 233.

Total Estimated Annual Burden: 1,781 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$164,516.50.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,
Deputy Chief Counsel.

[FR Doc. 2026–22068 Filed 10–28–26; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2026–1882]

NHTSA Workshop on Aftermarket Modifications and ADAS Performance

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

ACTION: Notice of a public meeting.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) will hold a Workshop on December 10, 2026 to use its convening authority to discuss advanced driver assistance system (ADAS) performance, as it pertains to the effects of aftermarket modifications. The event will not be live streamed; however, it will be recorded and made available on the NHTSA website after the event.

DATES: NHTSA will hold the Workshop on December 10, 2026, with specific agenda to be shared closer to the event at the website listed below. Registration is free but required and must be completed no later than December 3, 2026. See **SUPPLEMENTARY INFORMATION** section below for details on how to register. The public docket for the Aftermarket Modifications and ADAS Performance Workshop will remain open for comments for 90 days following the Public Meeting.

ADDRESSES: The Public meeting will be held in person at the West Atrium of DOT Headquarters (1200 New Jersey Avenue SE, Washington, DC 20590).

FOR FURTHER INFORMATION CONTACT: If you have questions about the event, please contact Dee Williams at dee.williams@dot.gov.

SUPPLEMENTARY INFORMATION:

Registration is required for anyone planning to attend the ADS Safety and Aftermarket Modifications Workshop. Attendees must register at https://docs.google.com/forms/d/e/1FAIpQLSeXXJaMDYzts4WMPWT6dh5pds1wtwLVfXYXIIPtPdpAo4V_w/viewform no later than December 3, 2026. Please follow the registration instructions presented at the registration site. A sign language interpreter will be provided, and closed captioning services will be available. During registration, please indicate whether you may need any other type of special accommodation. Should it be necessary to cancel or reschedule the Workshop due to an unforeseen circumstance, NHTSA will take all available measures to notify registered participants as soon as possible. NHTSA

will conduct the event informally, and technical rules of evidence will not apply. The Public meeting will not be live streamed but recorded, and a recording will be made available after the event.

Comments: Comments about either the Workshop may be submitted electronically or in hard copy during the 90-day comment period. Please submit all comments no later than.

April 19, 2027, by any of the following methods:

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

- *Fax:* (202) 493–2251.

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

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

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

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://www.regulations.gov/privacy.html>.

Confidential Business Information: If you claim that any of the information in your comment (including any additional documents or attachments) constitutes confidential business information within the meaning of 5 U.S.C. 552(b)(4) or is protected from disclosure pursuant to 18 U.S.C. 1905, please see the detailed instructions given under the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Background: As modern vehicles transform into software-defined

¹ 85 FR 12826 (Mar. 4, 2020).

² 87 FR 35660 (June 13, 2022).

³ 49 CFR 270.403(a).

platforms reliant on intricate sensor suites and Advanced Driver Assistance Systems (ADAS), they increasingly present new challenges to the automotive aftermarket modification industry. While vehicle modification has long driven consumer customization, performance, and commercial utility, altering parameters like ride height, bumper geometry, body panels, or wheel offset could negatively impact the performance of ADAS by altering their calibration. Systems not calibrated accurately are likely to have reduced performance in detecting the critical crash imminent situations they were designed for and could lead to false activations resulting in potential safety hazards.

This event serves as a collaborative bridge between the broader automotive ecosystem and safety regulators, bringing together industry stakeholders, technical experts, and policymakers to examine engineering parameters, field realities, and data frameworks. Together, participants will explore practical, data-driven approaches to the possibility of maintaining the functionality of safety-critical ADAS and active safety technologies while preserving vehicle owner autonomy in altering their vehicles.

As time permits, there will be an opportunity for Workshop attendees to participate in Q&A following each panel.

Updates on this event will be available at <https://www.nhtsa.gov/events/adas-workshop-aftermarket-modifications-and-adas-performance> and NHTSA recommends checking back periodically for updates or potential schedule changes.

The Agency invites comments on the information presented, as well as input on any research needs, information gaps, and actionable next steps the public may believe NHTSA should address.

Issued under authority delegated in 49 CFR 1.95 and 501.8.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2026-22067 Filed 10-28-26; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

U.S. Merchant Marine Academy Board of Visitors; Public Meeting

AGENCY: Office of the Secretary of Transportation, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation announces a public meeting of the U.S. Merchant Marine Academy (USMMA) Board of Visitors (Board).

DATES: November 12, 2026, from 2:00 p.m. to 4:00 p.m. EST. Requests to virtually attend this public meeting must be received by October 29, 2026. Written statements to be considered during the meeting must be received via email to ExternalAffairs@usmma.edu no later than November 5, 2026. Requests for accommodations for a disability must be received via email to ExternalAffairs@usmma.edu no later than November 5, 2026.

ADDRESSES: The meeting is open to the public and will be held in person with remote participation by certain Board members and presenters. Public attendees may only attend the meeting virtually. The meeting will be held at the U.S. Department of Transportation Headquarters, Dr. Gladys West Room, Ninth Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Members of the public who request virtual attendance by October 29, 2026 will be welcomed via a link posted on the USMMA Board of Visitors web page prior to the event. The USMMA Board of Visitors web page and information about the Board is found at <https://www.usmma.edu/about/leadership/board-visitors>.

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer and Point of Contact, Michael O'Hagan, 516-726-6048 or ExternalAffairs@usmma.edu.

SUPPLEMENTARY INFORMATION:

Background

The Board is a Federal Advisory Committee originally established as a Congressional Board by 46 U.S.C. 51312 "to provide independent advice and recommendations on matters relating to the United States Merchant Marine Academy." The Board was originally chartered under the Federal Advisory Committee Act (FACA) on October 24, 2017.

Agenda

The meeting agenda will cover, but is not limited to, the following proposed topics:

1. Welcome remarks and Board maintenance items.
2. Academy modernization and budget requirements.
3. Statutory and legislative matters affecting Academy operations.
4. Honor Code and Code of Conduct.

5. Regimental Commander brief.
6. Board questions and discussion.

Public Participation

The meeting is open to the public and will be held in person with remote participation by certain Board members and presenters. In person attendance is not available to the public. However, the public may request to attend the meeting virtually. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public wishing to attend virtually must register by emailing ExternalAffairs@usmma.edu no later than October 29, 2026.

Any member of the public is permitted to file a written statement with the Board. Written statements intended for consideration during the November 12, 2026, meeting must be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 5, 2026.

No member of the public will be allowed to present questions or speak during the meeting unless requested to do so by a member of the Board.

(Authority: 46 U.S.C. 51312; 5 U.S.C. 552b; 5 U.S.C. Ch. 10; 41 CFR parts 102-2.140 through 102-3.165)

Signed in Washington, DC, on October 26, 2026.

Jonathan Priebe,

Director of Governmental Affairs, U.S. Department of Transportation.

[FR Doc. 2026-22044 Filed 10-28-26; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review; Applications for Licensing or Registration To Issue Payment Stablecoins Under the GENIUS Act; Correction

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment; correction.

SUMMARY: In the **Federal Register** of October 23, 2026, the OCC published a

notice as part of its continuing effort to reduce paperwork and respondent burden, and invited comment on a new information collection, as required by the Paperwork Reduction Act of 1995 (PRA). The OCC proposed a new information collection to comply with the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act or the Act) requirement for entities seeking to issue payment stablecoins in the United States, titled "Applications for Licensing or Registration to Issue Payment Stablecoins Under the GENIUS Act." The **SUPPLEMENTARY INFORMATION** section contained a typographical error in the effective date for the Act.

DATES: Comments must be received by November 23, 2026.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office,

Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-NEW, 400 7th Street SW, Suite 1E-216, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 1E-216, Washington, DC 20219.

- *Fax:* (571) 293-4835.

Instructions: You must include "OCC" as the agency name and "1557-NEW" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. You can find this information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the "Information Collection Review" tab and click on "Information Collection Review" from the drop-down menu. From the "Currently under Review" drop-down menu, select "Department of the Treasury" and then click "submit." This information collection can be located by searching OMB control number "1557-NEW" or "Applications for Licensing or Registration to Issue Payment Stablecoins Under the GENIUS Act." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Correction

In the October 23, 2026, issue of the **Federal Register**, in FR Doc. 2026-21704, on page 66939, in the third column, in the Description section, remove "January 18, 2026" and add in its place "January 18, 2027."

Sarah E. Turney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026-22036 Filed 10-28-26; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Renewal Without Change of the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 30, 2026 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Financial Crimes Enforcement Network (FinCEN)

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1506-0062.

Type of Review: Extension without change of a currently approved collection.

Description: FinCEN is issuing this notice to renew the OMB control number associated with its collection of public feedback with respect to timeliness, appropriateness, accuracy of information provided by FinCEN; courtesy and efficiency in service delivery; and resolution of service delivery issues. Responses will help FinCEN assess, maintain, and improve the quality of service offered to the public. Without this collection, FinCEN would have less information from customers and stakeholders to evaluate service quality and identify opportunities for improvement.

Form: Not applicable.

Affected Public: Business or other for-profit institutions; non-profit institutions; and certain Federal, state, and local law enforcement and regulatory agencies.

On July 29, 2026, FinCEN published a notice and request for comments regarding the renewal of the OMB control number associated with its collection of public feedback with respect to timeliness, appropriateness, accuracy of information provided by FinCEN; courtesy and efficiency in service delivery; and resolution of

service delivery issues.¹ Following publication of that notice, FinCEN identified an additional survey that, when deployed, would also be covered under this control number. FinCEN is therefore revising its estimated number of expected respondents and burden hours upward from the original notice by approximately 28 respondents and six burden hours per year, on average, or a total of 84 respondents and 18 hours over the full three-year period covered by this notice.

Estimated Average Number of Potential Respondents: 39,755.²

Estimated Average Number of Expected Respondents Annually: 5,245.³

Estimated Average Number of Expected Responses Annually: 5,245.⁴

Frequency of Response: As required, though generally once per year, per survey.

Estimated Average Total Annual Reporting Burden: 1,502.⁵

¹ See FinCEN, Agency Information Collection Activities: Proposed Renewal; Comment Request; Renewal without Change of the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 91 FR 47915 (Jul. 29, 2026).

² FinCEN anticipates it will send an average of approximately 39,755 survey invitations to businesses or other for-profit institutions; non-profit institutions; and certain Federal, state, and local law enforcement and regulatory agencies each year over the three-year period requested for approval under this OMB control number. The estimated number of potential respondents is based on a conservative assessment of the total number of surveys expected to be sent as informed by historical survey activity. From 2023 to 2025, FinCEN distributed approximately 119,265 survey invitations, averaging approximately 39,755 survey invitations annually. Because some institutions may receive multiple invitations within a given year, the number of survey invitations may not represent the number of unique entities solicited, but rather reflects an upper-bound value of the expected number of potential respondents.

³ In the three years of survey administration between 2023 and 2025, FinCEN received approximately 15,734 completed surveys, averaging approximately 5,245 completed surveys annually. The estimated number of future respondents is based on a conservative assessment of historical response rates. Because some institutions may have completed multiple invitations within a given year, the number of completed surveys modestly exceeds the number of unique institutions that participated in the activities.

⁴ FinCEN anticipates sending surveys to approximately 39,755 respondents annually. Based on survey results from 2023 to 2025, FinCEN estimates receiving 5,245 responses annually. Over the three-year period requested for approval of this OMB control number, this equates to an estimated 15,734 responses.

⁵ FinCEN anticipates the respective surveys covered by this control number would require an average of eight to 27 minutes to complete, or an approximate average of 17.19 minutes, as weighted by the distribution of responses received by survey

Estimated Total Three-Year Reporting Burden: 4,507 hours.⁶

Authority: 44 U.S.C. 3501 et seq.

Juliana L. Pearson,

Treasury PRA Clearance Officer.

[FR Doc. 2026–22101 Filed 10–28–26; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA–2026–VACO–0001]

Corporate Senior Executive Management Office Notice of Performance Review Board Members; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), published a document in the *Federal Register* of October 1, 2026, concerning the appointment of individuals to serve on the VA's Performance Review Board (PRB) that inadvertently omitted the name of one individual. This document corrects that notice by adding one additional PRB member.

FOR FURTHER INFORMATION CONTACT:

Melanie J. McGuire, Executive Director, Corporate Senior Executive Management Office, Office of Human Resources and Administration, at Melanie.McGuire@va.gov or 202–394–7490.

SUPPLEMENTARY INFORMATION:

Correction

On October 1, 2026, in a *Federal Register* notice titled “Corporate Senior Executive Management Office Notice of Performance Review Board Members”, VA announced the appointment of individuals to serve on the VA's PRB. See 91 FR 62596. This notice corrects the prior notice by adding an additional member to the PRB. The amended list now includes the following individuals: Lawrence, Paul R.—Chair Engelbaum, Mark R.—Vice Chair Amick, Kevin P.

type in the three-year period between 2023 and 2025. Given an estimated 5,245 expected responses each year, FinCEN conservatively estimates a respondent burden of approximate 1,502 hours annually (17.19 minutes per response × 5,245 responses, converted to hours).

⁶ Over the three-year period requested for approval of this OMB control number, the total respondent burden is estimated at approximately 4,507 hours (1,502 hours annually × 3 years).

Beck, Mari C.
Bocchicchio, Alfred J.
Bowman, Janna
Boyd, Teresa D.
Carter, Don C.
Clark, Ada Y.
Connell, Lawrence
Dannenberg, Walt C.
De Leon, Joshua
Decelles Slusher, Michelle E.
Flint, Sandra D.
Gruntmeir, Doris
Hamilton, Ryan
Hawthorne, Cory
Hayes-Byrd, Jacquelyn
Heiman, Ryan M.
Jones, Rhonda J.
Kobelja, Mark A.
Koeniger, Mark A.
Leahy, James
Lee, Aaron M.
Logue, Michael J.
Marsh, Willie C.
McCormick, Cortney Lynn
Morton, Barbara C.
O'Toole, Thomas P.
Parker, Christopher D.
Pozzebon, Lisa
Prietula, Laura V.
Prince-Wheeler, Latriece R.
Puetz, Tim
Repasky, Stephanie A.
Salyers, Jessica L.
Schmitt, Joseph G.
Sharpe, Timothy A.
Sirhal, Timothy
Smith, Alyshia W.
Tenhula, Wendy N.
Terrell, Brandye
Tibbits, Paul
Vulaj, Marie A.
Wall, Holly
Wiechers, Ilse R.
Williams, Derek R.
Wood, David P.
Young, Stephanie
Zomchek, Daniel S.

Authority: 5 U.S.C. 4314(c)(4)

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on October 26, 2026 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jacquelyn Collins,

Alternative Federal Register Liaison Officer, Department of Veterans Affairs.

[FR Doc. 2026–22041 Filed 10–28–26; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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October 29, 2026

Part II

Environmental Protection Agency

40 CFR Part 60

Additional Reconsideration Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[EPA-HQ-OAR-2025-0163; FRL-12726-01-OAR]

RIN 2060-AW73

Additional Reconsideration Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review**AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the New Source Performance Standards and Emission Guidelines for the Crude Oil and Natural Gas Source Category to address additional concerns raised with prior regulatory amendments finalized in March 2024. Specifically, the EPA is proposing changes in response to certain petitions for reconsideration of the March 2024 amendments, changes based on policy decisions and supporting legal interpretations, and changes that correct and clarify the regulatory text of the new source performance standards and emission guidelines. First, the EPA proposes to rescind the Super Emitter Program. Second, the EPA proposes to subcategorize different types of well sites affected and designated facilities to address issues related to the requirements finalized in March 2024 for marginal well sites and conventional well sites. Third, the EPA proposes changes to address issues related to liquids unloading, process controllers, pumps, fugitive emissions, storage vessels, covers and closed vent systems, equipment leaks at gas plants, and associated gas. Fourth, the EPA proposes changes to certain requirements finalized in March 2024 related to control devices and to provide owners and operators the option to conduct optical gas imaging surveys according to Appendix K for gas processing facilities. Lastly, the EPA proposes changes to correct inadvertent errors and to clarify regulatory language.

DATES: Comments must be received on or before December 16, 2026. The EPA will announce further details at <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations>. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of

consideration if the Office of Management and Budget receives a copy of your comments on or before November 30, 2026.

Public Hearing. The EPA will hold a virtual public hearing on November 13, 2026. Please refer to the **SUPPLEMENTARY INFORMATION** for information on registering for the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2025-0163, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov> (our preferred method). Follow the online instructions for submitting comments.
- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2025-0163 in the subject line of the message.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2025-0163, 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 written comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information about this proposed rule, contact Paz Aviles, Natural Resources Division, Office of Clean Air Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-9822; and email address: aviles.paz@epa.gov. Additional questions may be directed to the following email address: O&GMethaneRule@epa.gov.

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. The hearing will be held via virtual platform November 16, 2026. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at <https://www.epa.gov/>

controlling-air-pollution-oil-and-natural-gas-operations.

The EPA will begin pre-registering speakers for the hearing no later than one 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/controlling-air-pollution-oil-and-natural-gas-operations> or contact the public hearing team at (888) 372-8699 or by email at NRDpublichearing@epa.gov. The last day to pre-register to speak at the hearing will be November 10, 2026. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers at: <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations>.

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.

Each commenter will have four 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/controlling-air-pollution-oil-and-natural-gas-operations>. 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 NRDpublichearing@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 accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by November 9, 2026. The EPA may not be able to arrange accommodations without advance notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2025-0163. All documents in the docket are listed 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 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. 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. Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of this rule is available on the docket at <https://www.regulations.gov>.

Written Comments. Direct your comments to Docket ID No. EPA-HQ-OAR-2025-0163. The EPA's policy is that the public docket will contain all comments received without change and made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be 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. You should submit this type of information as described in the *Submitting CBI* section of this preamble.

The EPA may publish any comment received to its public docket. A written comment must accompany multimedia submissions (audio, video, *etc.*). The EPA considers the written comment to be the official comment, and it should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

The <https://www.regulations.gov> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any 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 has indexed each comment solicitation with an identifier (*e.g.*, "C-1, C-2, . . .") to provide a consistent framework for effective and efficient provision of comments. Accordingly, the EPA asks that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. The EPA asks that commenters include the identifier in either a heading or in the text of each comment (*e.g.*, "In response to C-1, . . .") to make clear which comment solicitation you are addressing. The EPA emphasizes that the EPA is not limiting comment to these identified areas and encourage you to provide any other comments relevant to this 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 *Instructions* above. 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 part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, 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 at the email address ocapcbi@epa.gov and, as described above, 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 to receive instructions.

Preamble acronyms and abbreviations. Throughout this document the use of "we," "us," or "our" is intended to refer to the EPA. The Agency 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:

AMEL alternative means of emission limitation
 API American Petroleum Institute
 ASTM ASTM International
 AVO audible, visual, and olfactory
 BCD backup control devices
 BMPs best management practices
 boe barrels of oil equivalents
 BSER best system of emission reduction
 °C degrees Celsius
 CAA Clean Air Act
 CBI Confidential Business Information
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting
 CFR Code of Federal Regulations
 CVS closed vent systems
 DOE Department of Energy
 EAV equivalent annualized values
 ECD enclosed combustion device
 EG emission guidelines
 EPA Environmental Protection Agency
 °F degrees Fahrenheit
 FR Federal Register
 g/hr grams per hour
 GHG greenhouse gas
 GOR gas-to-oil ratio
 H₂S hydrogen sulfide
 ICR information collection request
 IFR interim final rule

kg/hr kilograms per hour
 low-E low emission
 LDAR leak detection and repair
 LPE legally and practicably enforceable
 Mcfd thousand cubic feet per day
 MOGA Michigan Oil and Gas Association
 MPT Manufacturers' Performance Test
 NAAQS National Ambient Air Quality Standards
 NAICS North American Industry Classification System
 NDE no detectable emissions
 NESHAP National Emission Standards for Hazardous Air Pollutants
 NIE no identifiable emissions
 NHV net heating value
 NSPS new source performance standards
 NTTAA National Technology Transfer and Advancement Act
 OCAP Office of Clean Air Programs
 OGI optical gas imaging
 OIRA Office of Information and Regulatory Affairs
 OMB Office of Management and Budget
 psig Pounds per square inch gauge
 ppmv parts per million by volume
 PRA Paperwork Reduction Act
 PTE potential to emit
 PV present value
 RFA Regulatory Flexibility Act
 RIA regulatory impact analysis
 scfh standard cubic feet per hour
 SO₂ sulfur dioxide
 TCD temporary control device
 tpy tons per year
 TIP Tribal Implementation Plan
 TSD technical support document
 UMRA Unfunded Mandates Reform Act
 U.S. United States
 VOC volatile organic compound(s)
 VRU vapor recovery unit

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I. Executive Summary

On March 8, 2024, the EPA published a final rule amending and expanding requirements for the Crude Oil and Natural Gas source category under Clean Air Act (CAA) sections 111(b) and (d) ("March 2024 Final Rule").¹ The EPA finalized new source performance standards (NSPS) for greenhouse gas (GHG) and volatile organic compound (VOC) emissions from new, modified, and reconstructed sources in this source category, codified in 40 Code of Federal Regulations (CFR) part 60, subpart OOOOb (NSPS OOOOb). The EPA also finalized emission guidelines (EG) for GHG emissions from existing sources in this source category, codified in 40 CFR part 60, subpart OOOOc (EG OOOOc). The NSPS OOOOb applies to thousands of new sources, whose construction, reconstruction, or modification began after December 6, 2022, and the EG OOOOc covers hundreds of thousands of existing sources in the Crude Oil and Natural Gas source category. Crude oil production applicability includes the well and extends to the point of custody transfer to the crude oil transmission pipeline or any other forms of transportation. Natural gas production applicability includes production, processing, transmission, and storage, which includes the well and extends to, but does not include, the local distribution company custody transfer station.

The March 2024 Final Rule broke new ground in multiple respects. In EG OOOOc, the EPA required States to regulate GHG emissions from hundreds of thousands of existing sources in the Crude Oil and Natural Gas source category for the first time. This novel and massive task is presenting additional and, at times, unforeseen coordination and compliance difficulties. For several aspects of NSPS OOOOb and EG OOOOc, the EPA promulgated ambitious "zero-emission requirements" predicated on very different best system of emissions reduction (BSER) determinations. With respect to associated gas produced during oil extraction, for example, the EPA predicated its zero-emission standard for new sources on a BSER of routing gas to sales lines based on the assumption that sources would be located in an area where such infrastructure—generally owned and operated by third parties—is, or would be, established at sufficient scale. Recognizing that not all existing sources fit within that assumption, the Agency built subcategories into the BSER analysis and resulting presumptive standards that allow continued flaring under certain circumstances. For new sources, the Agency concluded that it was appropriate to require routing to a sales line based, among other things, on a cost-effectiveness analysis that assumed new sources would be located within 50 miles of existing infrastructure. This approach broadened the BSER analysis from source-centered compliance to one that very heavily relied on industry-wide participants unregulated by NSPS OOOOb and EG OOOOc, which raised novel legal and policy questions that the Agency did not fully grapple with at the time of promulgation. The resulting new source standard in the March 2024 Final Rule, as discussed herein, risks limiting the development of new oil and gas extraction areas where potential sources must hold back until or unless necessary infrastructure develops, thereby coming into tension with the economics of the industry, national security and energy priorities, and CAA section 111's instruction to develop new source standards that can be achieved across the Nation.

After publication of the March 2024 Final Rule, the EPA received multiple petitions for reconsideration.² On May 6, 2024, the EPA notified certain petitioners and the public that the Agency granted reconsideration on two discrete aspects of the March 2024 Final

¹ 89 FR 16820 (March 8, 2024).

² See Docket No. EPA-HQ-OAR-2025-0163 for petitions for reconsideration received.

Rule: the temporary flaring provisions for associated gas in certain situations; and the vent gas net heating value (NHV) continuous monitoring requirements and alternative performance test (sampling demonstration) option for flares and enclosed combustion devices.^{3,4}

On January 15, 2025, the EPA proposed amendments to the NSPS and EG for Existing Sources for the Crude Oil and Natural Gas Source Category in response to these petitions for reconsideration (“January 2025 Reconsideration Proposal”).⁵ Specifically, the EPA proposed discrete technical changes to two different aspects of the March 2024 Final Rule (i.e., technical changes to the temporary flaring provisions for associated gas in certain situations; technical changes to the vent gas NHV continuous monitoring requirements and alternative performance test (sampling demonstration) option for flares and enclosed combustion devices).

On April 9, 2026, the EPA finalized amendments to the March 2024 Final Rule resulting from our reconsideration of these two discrete issues (“April 2026 Reconsideration Final Rule”).⁶ The EPA is not reopening NHV issues from the April 2026 Reconsideration Final Rule in this new rule. This package is proposing changes to associated gas and can be found in section III.J. of this preamble. The proposed changes to associated gas will address broader issues than those raised in the April 2026 Reconsideration Final Rule, including proposing to remove the provisions related to temporary flaring.

On January 20, 2025, the President issued Executive Orders 14154 (Unleashing American Energy) and 14156 (Declaring a National Energy Emergency).^{7,8} Then, on January 31, 2025, the President issued Executive Order 14192 (Unleashing Prosperity through Deregulation).⁹ On March 12, 2025, the EPA announced plans for deregulatory actions to, among other things, unleash American energy.¹⁰ On that same day, the Agency announced plans to reconsider the regulations in

the March 2024 Final Rule “to ensure they do not prevent America from unleashing energy dominance.”¹¹

On July 31, 2025, the EPA promulgated an interim final rule (“July 2025 IFR”) which extended deadlines for certain provisions in the NSPS OOOOb related to control devices, equipment leaks, storage vessels, process controllers, and covers and closed vent systems (CVS) to address legitimate concerns, raised by stakeholders, that certain regulatory provisions were not currently workable or contained problematic regulatory language that frustrates compliance.¹² Within that IFR, the EPA also extended the date for future implementation of the Super Emitter Program and extended the State plan submittal deadline in EG OOOOc. The EPA solicited public comment on the extensions included in the July 2025 IFR. The EPA considered the comments received, and then, in December 2025, the EPA promulgated a final rule which responded to the comments and reaffirmed the conclusions and the regulatory amendments made in the IFR (“December 2025 Final Rule”).¹³ In response to comments received on the July 2025 IFR, the December 2025 Final Rule provided an additional 180-day extension (from the final rule’s effective date) (until June 1, 2026) to the compliance dates related to NHV monitoring of flares and enclosed combustion devices (ECDs) found in 40 CFR 60.5417b(d)(8)(i) through (iv) and (vi), as well as 360 days from the effective date of the December 2025 Final Rule (November 30, 2026) for owners and operators to submit initial annual reports pursuant to 40 CFR 60.5420(b).¹⁴

This proposal reflects the EPA’s reconsideration of additional aspects of the March 2024 Final Rule, including some of the Agency’s prior BSER determinations and the legal and policy positions taken in finalizing those determinations. Upon further review, and in light of information considered since promulgation, the EPA no longer believes that some of the “zero-emission” requirements in NSPS OOOOb and EG OOOOc are predicated on acceptable assessments of emissions

reductions, cost effectiveness, and achievability. In some cases, the March 2024 Final Rule moved from requirements that control 95 percent of emissions to standards stated as “zero-emission” requirements. However, achievability limitations and compliance difficulties, including those the EPA anticipated at the time by building in exemptions and those the Agency did not foresee, suggest that the requirements’ emission reductions potential are more modest than previously anticipated. At the same time, the Agency very likely underestimated costs because the actual costs of compliance are likely higher than the EPA anticipated in the March 2024 Final Rule. The resulting reconsideration—taking into account more modest emissions reductions and more significant costs—suggests that significant aspects of some BSER determinations and resulting standards in the March 2024 Final Rule are inappropriate. EPA solicits comment on further considerations relative to the March 2024 Final Rule, such as those petitioners have flagged.

In this action, the EPA proposes the following:

- Rescinding the Super Emitter Program in NSPS OOOO, OOOOa, OOOOb, and EG OOOOc based on a change in policy direction, concerns with the authority of the program, and a reassessment of the Program’s expected effectiveness in light of new information.

- Revising several aspects of NSPS OOOOb and EG OOOOc based on petitions received on the March 2024 Final Rule. Specifically, the EPA proposes changes to the March 2024 Final Rule requirements to address certain petitioner concerns for liquids unloading, process controllers, pumps, fugitive emissions, storage vessels, covers and CVSs, and equipment leaks at gas plants.

- Revising the March 2024 Final Rule requirements related to control devices, such as requirements for continuous burning pilot flames, flame monitoring data deviations, control device alerts, visible emissions test conditions for fugitive emissions, control devices used on a temporary or backup basis, temporary process controllers, and control device categories.

- Proposing changes related to requirements for controlling emissions from associated gas from wells producing primarily oil. The EPA is proposing that routing to a sales-line is not an appropriate BSER for these emissions. The Agency is proposing that routing associated gas to a control device or a flare that achieves 95%

³ See Docket No. EPA-HQ-OAR-2025-0163 for May 6, 2024, letter granting reconsideration.

⁴ In the May 6, 2024, letter to petitioners, the EPA also took the opportunity to clarify the applicable timeframe for performance testing with respect to NHV sampling.

⁵ 90 FR 3734 (January 15, 2025).

⁶ 91 FR 18056 (April 9, 2026).

⁷ 90 FR 8353 (January 29, 2025).

⁸ 90 FR 8433 (January 29, 2025).

⁹ 90 FR 9065 (February 6, 2025).

¹⁰ EPA Press Release: EPA Launches Biggest Deregulatory Action in U.S. History. <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history>. March 12, 2025.

¹¹ EPA Press Release: Trump EPA Announces OOOO b/c Reconsideration of Biden-Harris Rules Strangling American Energy Producers. <https://www.epa.gov/newsreleases/trump-epa-announces-oooo-bc-reconsideration-biden-harris-rules-strangling-american>. March 12, 2025.

¹² 90 FR 35966 (July 31, 2025).

¹³ 90 FR 55671 (December 3, 2025).

¹⁴ See 90 FR 35970–35972 (July 31, 2025), and 90 FR 55675–55676 (December 3, 2025) for discussion of the rationale for NHV monitoring extension.

reductions in emissions or greater should be BSEB instead.

- Proposing to add a new subcategory for certain well sites affected and designated facilities based on a variety of operational conditions. This aspect of the proposal also includes revisions to requirements that apply at certain well sites that address concerns related to the appropriateness of the categorization and the burden associated with complying with the March 2024 Final Rule requirements. Specifically, in this action, the EPA is co-proposing two alternative approaches to subcategorizing well sites:
 - An option based on marginal and non-marginal well sites that would include reduced requirements for marginal wells. The EPA also solicits comment on an alternative approach to a marginal well site subcategory that would further subcategorize marginal wells based on production levels.
 - An option based on conventional and non-conventional wells that would include reduced requirements for conventional wells.
- Allowing for owners and operators to conduct optical gas imaging (OGI) surveys according to Appendix K for NSPS OOOO, OOOOa, and KKK at gas processing facilities.

- Making technical corrections and clarifications to NSPS OOOO, OOOOa, OOOOb, and EG OOOOc.

The EPA solicits comments on its proposed regulatory changes. Within this preamble, the EPA is also soliciting broader comment on further issues relevant to the March 2024 Final Rule and resulting NSPS OOOOb and EG OOOOc, including both the additional issues raised by reconsideration petitioners for which the EPA is not proposing regulatory changes at this time and any additional issues commenters believe are relevant to the lawfulness, reasonableness, or implementability of the 2024 Final Rule. (Question I.1)

The EPA is also clarifying in this preamble an inconsistency identified in the amendatory instructions published as part of the April 2026 Reconsideration Final Rule. The amendatory language appeared to indicate a revision to 40 CFR60.5417b(i)(6),¹⁵ which had been revised as part of an earlier action (an IFR promulgated on July 31, 2025). The regulatory text in the CFR correctly reflects that earlier amendment. The inconsistency occurred only in the amendatory instructions and did not affect the regulatory text. In this notice, the EPA is not proposing any revisions

to paragraph 40 CFR 60.5417b(i)(6)(v). The EPA is instead clarifying the source of the discrepancy to ensure transparency in the rulemaking record and to confirm that the existing regulatory text remains accurate and unchanged.

The EPA estimated present values (PV) and equivalent annualized values (EAV) of the estimated increase in economic surplus of this proposal and co-proposal in 2024 dollars over the 2027 to 2050 period, discounted to 2025. Estimated increases in economic surplus include reductions in compliance cost expenditures from industry, as well as increased value to consumers from lower commodity prices and revenues to industry from increased production. Surplus changes also account for the forgone value of natural gas captured as a result of less stringent compliance obligations. Changes beyond compliance cost savings are represented by the Savings from Energy Market Impacts values. Table 1 presents the estimated additional economic surplus of this proposed action in 2024 dollars for the baseline which includes the March 2024 Final Rule (*i.e.*, the primary baseline analyzed in the regulatory impact analysis (RIA)).

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Table 1. Present Value and Equivalent Annualized Value of Increased Economic Surplus Estimates of the Proposed Action, Discounted to 2025 (Millions of 2024 Dollars), 2027-2050^a

		3 Percent Discount Rate		7 Percent Discount Rate	
		PV	EAV	PV	EAV
Proposed Reconsideration	Compliance Cost Savings ^b	\$42,000	\$2,500	\$29,000	\$2,500
	Savings from Energy Market Impacts	\$3,000	\$200	\$3,000	\$300
	Net Surplus	\$45,000	\$2,700	\$32,000	\$2,800
Co-Proposal	Compliance Cost Savings ^b	\$39,000	\$2,300	\$27,000	\$2,300
	Savings from Energy Market Impacts	\$370	\$22	\$1,000	\$100
	Net Surplus	\$39,000	\$2,300	\$28,000	\$2,400

^a Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.

^b The Compliance Cost Savings rows include the change in value of product recovery.

¹⁵ 91 FR 18094 (April 9, 2026).

II. General Information

A. Applicability of This Regulatory Action

The source category that is the subject of this proposal is the Crude Oil and Natural Gas Source Category regulated under CAA section 111, NSPS and EG.

The 2022 North American Industry Classification System (NAICS) code for the source category is summarized in table 2. The NAICS codes serve as a guide for readers outlining the entities that this proposed action is likely to affect, if finalized. The NSPS codified in

40 CFR part 60, subpart OOOOb, are directly applicable to affected facilities that begin construction, reconstruction, or modification after December 6, 2022. As shown in table 2, Federal, State, and local government entities would not be affected by the NSPS action.

Table 2. Industrial Source Categories Affected by NSPS Action

Category	NAICS Code	Examples of Regulated Entities
Industry	211120	Crude Petroleum Extraction
	211130	Natural Gas Extraction
	221210	Natural Gas Distribution
	486110	Pipeline Distribution of Crude Oil
	486210	Pipeline Transportation of Natural Gas
Federal Government		Not affected
State and local Government		Not affected
Tribal Government	921150	American Indian and Alaska Native Tribal Governments

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by the NSPS action with respect to new sources. Other types of entities not listed in the table could also be affected by the NSPS action. To determine whether your entity is affected by any of the NSPS action, you should carefully examine the applicability criteria found in the final NSPS rule. If you have questions regarding the applicability of the NSPS rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section, your State air pollution control agency with delegated authority for NSPS, or your EPA Regional Office.

The issuance of the CAA section 111(d) EG in March 2024 did not directly impose binding requirements on existing sources, but instead established requirements applicable to states in developing their plans. While the presumptive standard determined by the EPA is the starting point for a state's standards of performance in its state plan, a state may choose to take into account remaining useful life and other factors in applying a standard of performance to a particular source, consistent with the CAA, the EPA's implementing regulations, and the final EG. The EG codified in 40 CFR part 60, subpart OOOOc, applies to States in the development, submittal, and implementation of State plans to

establish performance standards to reduce emissions of GHGs from designated facilities that are existing sources on or before December 6, 2022. Under the Tribal Authority Rule, eligible Tribes may seek approval to implement a plan under CAA section 111(d) in a manner similar to a State.¹⁶ Tribes may, but are not required to, seek approval for treatment in a manner similar to a State to develop Tribal implementation plans (TIPs) implementing the EG codified in 40 CFR part 60, subpart OOOOc. The Tribal Authority Rule authorizes Tribes to develop and implement their own air quality programs, or portions thereof, under the CAA. However, it does not require Tribes to develop a CAA program. Tribes may implement programs that are most relevant to their air quality needs. If a Tribe does not seek and obtain the authority from the EPA to establish a TIP, the EPA has the authority to establish a Federal CAA section 111(d) plan for designated facilities that are located in areas of Indian country.¹⁷ A Federal plan would apply to all designated facilities located in the areas of Indian country covered by the Federal plan unless and until the

EPA approves a TIP applicable to those facilities.

B. Availability of This Document and Other Related Information

In addition to being available in the docket, at Docket ID No. EPA-HQ-OAR-2025-0163 located at <https://www.regulations.gov>, an electronic copy of this action is available on the internet at <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations>. A brief summary of this proposed rule may be found at www.regulations.gov, Docket ID No. EPA-HQ-OAR-2025-0163. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

A memorandum showing the edits that would be necessary to incorporate the changes to 40 CFR Part, 60 subparts KKK, OOOO, OOOOa, OOOOb and OOOOc proposed in this action is available in the docket (Docket ID No. EPA-HQ-OAR-2025-0163). Following signature by the Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations>.

C. Purpose of This Regulatory Action

On March 8, 2024, the EPA finalized NSPS for GHG and VOC emissions from new, modified, and reconstructed sources in this source category, codified

¹⁶ See 40 CFR part 49, subpart A.

¹⁷ See the EPA's website, <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>, for information on those Tribes that have treatment as a State for specific environmental regulatory programs, administrative functions, and grant programs.

in 40 CFR 60, subpart OOOOb (NSPS OOOOb) as well as EG for GHG emissions from existing sources in this source category, codified in 401 CFR 60, subpart OOOOc (EG OOOOc).

Prior to the March 2024 Final Rule, NSPS Subparts for this source category underwent multiple rounds of major policy revisions, technical amendments, and congressional actions. For example, NSPS OOOO (2012) applied only to VOC and sulfur dioxide emissions from new, modified, and reconstructed sources mainly in the upstream oil and gas sector. Although methane wasn't directly regulated, many upstream controls that targeted VOCs—like green completions, tank vapor control, and low-bleed pneumatics—also reduced methane as a co-benefit (“co-control”). In 2016, NSPS OOOOa added methane as a regulated pollutant and expanded coverage to include the midstream, adding requirements for transmission and storage, and additional source types (e.g., leak detection and repair (LDAR) at well sites and compressor stations, pneumatic pumps, compressors, hydraulically fractured oil wells). In 2020, EPA issued a rule titled, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,” September 14, 2020 (2020 Policy Rule), which removed the transmission and storage segment from the NSPS OOOO and OOOOa, rescinding VOC and methane emissions standards for that segment, and rescinded methane emissions standards for the production and processing segments. However, a joint congressional resolution disapproved the 2020 Policy Rule.

More recently, in 2024, NSPS OOOOb clarified the scope and coverage for addressing liquids unloading and certain intermittent emissions and added more stringent standards and methods, such as zero-emitting pneumatics, limits on routine flaring of associated gas at new oil wells, stronger LDAR with advanced detection options, tighter compressor requirements, and a super-emitter response program.

After publication of the March 2024 Final Rule, the EPA received, and continued to receive, multiple petitions for reconsideration.¹⁸ Additionally, following Executive Orders 14154 (Unleashing American Energy), 14156 (Declaring a National Energy Emergency), and Executive Order 14192 (Unleashing Prosperity through Deregulation), the EPA announced plans for deregulatory actions intended, among other things, to unleash

American energy and advance national energy policy goals.¹⁹ Against the backdrop of these Executive Orders, the EPA Administrator publicly announced reconsideration of the regulations in 40 CFR part 60, subparts OOOOb and OOOOc, in the March 2024 Final Rule.²⁰ As explained in further detail below, as a result of the EPA's thorough examination of the March 2024 Final Rule, the Agency has identified several aspects of the March 2024 Final Rule that merit proposed substantive regulatory changes.

In this proposed rule, the EPA proposes targeted amendments to the NSPS and EG for Existing Sources for the Crude Oil and Natural Gas Source Category, partially in response to issues raised in petitions to reconsider the March 2024 Final Rule. While the purpose of this rulemaking is not intended to respond to all petitioner requests, the EPA addresses several petitioner requests in this rulemaking. If a petitioner request is not addressed in this rulemaking, that does not mean that EPA will not address the petitioner request in the future.

D. Statutory Background and Authority

CAA section 111 authorizes the EPA to list and regulate categories of stationary sources that 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.”²¹ The listing of a source category triggers an obligation 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.²² This provision, along with agencies' authority to reconsider prior regulations, provides the EPA's statutory authority for this proposed action.²³

¹⁹ EPA Press Release: EPA Launches Biggest Deregulatory Action in U.S. History. <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history>. March 12, 2025.

²⁰ EPA Press Release: Trump EPA Announces OOOO b/c Reconsideration of Biden-Harris Rules Strangling American Energy Producers. <https://www.epa.gov/newsreleases/trump-epa-announces-oooo-bc-reconsideration-biden-harris-rules-strangling-american>. March 12, 2025.

²¹ 42 U.S.C. 7411(b)(1)(A).

²² 42 U.S.C. 7411(b), (d).

²³ 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.”).

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 NSPS. The NSPS are national requirements that apply directly to new sources within the relevant source category.

Congress intended the NSPS 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 under CAA section 112, NSPS under CAA section 111 apply to a new source regardless of whether the area in which the new source is located is subject to NAAQS-related limitations and requirements. 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)(4) further 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.²⁴

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 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

¹⁸ See Docket No. EPA–HQ–OAR–2025–0163 for petitions for reconsideration received.

²⁴ 40 CFR 60.15.

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 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

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.” After determining the BSER, the EPA derives from that system an “achievable” “degree of emission limitation.” 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

To qualify as the BSER, the system of emission reduction must be “adequately demonstrated” as “the Administrator determines.”²⁹ 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.³⁰ The D.C. Circuit has stated that the EPA may weigh the various factors identified in

the statute and caselaw to determine the “best” system and has emphasized that the EPA has significant discretion in weighing the factors (cost, health and environmental impact, and energy requirements).³¹ The EPA has broad discretion in determining which adequately demonstrated system of emission reduction is the “best.” The D.C. Circuit has explained that “section 111(a) explicitly instructs the EPA to balance multiple concerns when promulgating a NSPS”³² 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.³³

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 that the cost of which would be “excessive” or “unreasonable.”³⁴ 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.³⁵ The D.C. Circuit has repeatedly upheld the EPA’s consideration of cost in reviewing standards of performance.³⁶ Regarding energy impacts, based on the D.C. Circuit’s interpretations of CAA section 111, this factor may also include the impact, if any, of the air pollution controls on the energy supply for a

particular area or nationwide.³⁷ Furthermore, the EPA has considered under this statutory factor whether possible controls would create risks to the reliability of the national electricity system.³⁸

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 pollutants 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 emissions of such air pollutants from existing sources in the source category.³⁹ CAA section 111(a)(6) defines an “existing source” as “any stationary source other than a new source.”

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.”⁴⁰ 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.⁴¹ 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.⁴² In a comparable manner, State plans required by the regulations authorized in CAA section 111(d) must

³¹ *Lignite Energy Council v. EPA*, 198 F.3d 930, 933 (D.C. Cir. 1999) (“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.”).

³² *Sierra Club v. Costle*, 657 F.2d 298, 319 (D.C. Cir. 1981).

³³ *Id.* at 321; *see also New York v. Reilly*, 969 F.2d 1147, 1150 (D.C. Cir. 1992).

³⁴ *Sierra Club*, 657 F.2d at 343; *id.* at 383 (affirming a standard that was achievable and not “unreasonably costly”); *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) (noting with approval the EPA’s conclusion that “where the costs of meeting standards greater than the industry could bear and survive, such standards could not be implemented by the industry regardless of technological feasibility”).

³⁵ *Sierra Club*, 657 F.2d at 343.

³⁶ *See Essex Chem. Corp.*, 486 F.2d at 440; *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 387–88 (D.C. Cir. 1973); *Sierra Club*, 657 F.2d at 313.

³⁷ *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).

³⁸ *See* 89 FR 39886 (May 9, 2024).

³⁹ 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.”).

⁴⁰ *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.

⁴¹ 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).

⁴² 42 U.S.C. 7410.

²⁵ *West Virginia v. EPA*, 597 U.S. 697, 709 (2022).

²⁶ *See id.* at 727 (quoting an EPA rule).

²⁷ *Sierra Club v. Costle*, 657 F.2d 298, 364 n.276 (D.C. Cir. 1981).

²⁸ 42 U.S.C. 7411(b)(2).

²⁹ 42 U.S.C. 7411(a)(1).

³⁰ *Nat’l Asphalt Pavement Ass’n v. Train*, 539 F.2d 775, 786 (D.C. Cir. 1976); *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 434 (D.C. Cir. 1973).

“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 this provision, the Agency generally promulgates “emission guidelines” that identify the BSER and the degree of emission limitation achievable through the application of the BSER. (represented in EG OOOOc via presumptive standards in a model rule). The EPA’s 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. States need not compel regulated sources to adopt the particular components of the BSER itself (or the model rule or presumptive standards); rather, States have discretion in designing the policies and rules used to achieve the degree of emission limitation required by the EPA’s emission guidelines. The statute 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.”⁴³

Once the EPA approves a State’s plan, the provisions in the plan become federally enforceable in the same manner as the provisions of an approved SIP under the CAA.⁴⁴ If a State elects not to submit a plan or submits a plan that the EPA does not find “satisfactory,” the Agency is authorized to promulgate a plan that establishes Federal standards of performance for the state’s existing sources.⁴⁵ In establishing Federal standards of performance for existing sources under these circumstances, the EPA must “take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.”⁴⁶

E. Regulatory History and Background of NSPS and EG for the Crude Oil and Natural Gas Source Category

The EPA has regulated VOC emissions from the Crude Oil and Natural Gas source category since 1985 when the EPA promulgated NSPS for the Crude Oil and Natural Gas source category.⁴⁷ That rule addressed VOC

emissions from equipment leaks at onshore natural gas processing plants (40 CFR part 60, subpart KKK). On October 1, 1985, the EPA promulgated additional NSPS for the source category to regulate sulfur dioxide (SO₂) emissions from onshore natural gas processing plants (40 CFR part 60, subpart LLL).⁴⁸ In 2012, the Agency expanded requirements applicable to this source category by adding VOC standards for several oil and natural gas related operations emission sources not covered by 40 CFR part 60, subparts KKK and LLL, including natural gas well completions, centrifugal and reciprocating compressors, certain natural gas operated pneumatic controllers in the production and processing segments of the industry, and storage vessels in the production, processing, and transmission and storage segments.

For the first time in 2016, the Agency established requirements for certain equipment, processes, and operations across the Oil and Natural Gas Industry, including in the production, processing, and transmission and storage segments to address both GHG emissions (in the form of methane) in response to global climate change concerns, and VOCs.⁴⁹

In September 2020, the EPA published two final rules to amend 2012 NSPS OOOO and 2016 NSPS OOOOa. The first is titled, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review.”⁵⁰ Commonly referred to as the 2020 Policy Rule, it first rescinded the regulations applicable to the transmission and storage segment on the basis that the 1979 listing limited the source category to the production and processing segments and that the transmission and storage segment is not “sufficiently related” to the production and processing segments, and therefore cannot be part of the same source category.⁵¹ In addition, the 2020 Policy Rule rescinded methane requirements for the industry’s production and processing segments on two separate bases. The first was that such standards are redundant to VOC standards for these segments.⁵² The second was that the rule interpreted CAA section 111 to require, or at least authorize the Administrator to require, a pollutant specific “significant contribution finding” as a prerequisite to a NSPS for a pollutant, and to require that such finding be supported by some identified

standard or established set of criteria for determining which contributions are “significant.”⁵³ The rule went on to conclude that the alternative significant contribution finding that the EPA made in the 2016 Rule for GHG emissions was flawed because it accounted for emissions from the transmission and storage segment and because it was not supported by criteria or a threshold.^{54 55}

Published on September 15, 2020, the second of the two rules is titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration.”⁵⁶ Commonly referred to as the 2020 Technical Rule, this second rule made further amendments to the 2016 NSPS OOOOa following the 2020 Policy Rule to eliminate or reduce certain monitoring obligations and to address a range of issues in response to administrative petitions for reconsideration and other technical and implementation issues brought to the EPA’s attention since the 2016 NSPS OOOOa rulemaking. Specifically, the 2020 Technical Rule exempted low production well sites from fugitives monitoring (previously required semiannually), required semiannual monitoring at gathering and boosting compressor stations (previously quarterly), streamlined recordkeeping and reporting requirements, allowed compliance with certain equivalent State requirements as an alternative to NSPS fugitive requirements, streamlined the application process to request the use of new technologies to monitor for fugitive emissions, addressed storage tank batteries for applicability determination purposes and finalized several technical corrections. Because the 2020 Technical Rule was issued the day after the EPA’s rescission of methane regulations in the 2020 Policy Rule, the amendments made in the 2020 Technical Rule applied only to the requirements to regulate VOC emissions from this source category. The 2020 Policy Rule amended 40 CFR part 60, subparts

⁵³ 85 FR at 57034 (September 14, 2020).

⁵⁴ 85 FR 57038 (September 14, 2020).

⁵⁵ Following the promulgation of the 2020 Policy Rule, the EPA promulgated a final rule that identified a standard or criteria for determining which contributions are “significant,” which the D.C. Circuit vacated and remanded at the Agency’s request following a change in administration. “Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories.”⁸⁶ FR 2542 (January 13, 2021), vacated by *California v. EPA*, No. 21–1035 (D.C. Cir.) (Order, April 5, 2021, Doc. #1893155).

⁵⁶ 85 FR 57398 (September 15, 2020).

⁴³ 42 U.S.C. 7411(d)(1).

⁴⁴ 42 U.S.C. 7411(d)(2)(B).

⁴⁵ 42 U.S.C. 7411(d)(2)(A).

⁴⁶ 42 U.S.C. 7411(d)(2).

⁴⁷ 50 FR 26122 (June 24, 1985).

⁴⁸ 50 FR 40158 (October 1, 1985).

⁴⁹ 81 FR 35832 (June 3, 2016).

⁵⁰ 85 FR 57018 (September 14, 2020).

⁵¹ See 85 FR 57027, 57029 (September 14, 2020).

⁵² 85 FR at 57030 (September 14, 2020).

OOOO and OOOOa, as finalized in 2016. The 2020 Technical Rule amended the 40 CFR part 60, subpart OOOOa, as amended by the 2020 Policy Rule. The joint resolution disapproving the 2020 Policy Rule did not include or address the 2020 Technical Rule.

On November 15, 2021, the EPA published a proposed rule (“November 2021 Proposal”) aimed at reducing GHG and VOC emissions from parts of the oil and natural gas industry,⁵⁷ specifically the Crude Oil and Natural Gas source category.^{58, 59} In the November 2021 Proposal, the EPA proposed new and updated standards of performance under CAA section 111(b) for GHGs (in the form of methane limitations) and VOC emissions from new, modified, and reconstructed sources (affected facilities) in this source category, as well as revisions to standards of performance for GHGs and VOC emissions already codified at 40 CFR part 60, subparts OOOO and OOOOa. The November 2021 Proposal also proposed EG under CAA section 111(d) for GHGs emissions (in the form of methane limitations) from existing sources (designated facilities).⁶⁰ The EPA also proposed several related actions in the November 2021 Proposal to address issues related to congressional disapproval of the 2020 Policy Rule under the Congressional Review Act in 2021. Lastly, in the November 2021 Proposal, the EPA proposed a protocol for OGI under the general provisions of 40 CFR part 60.

On December 6, 2022, the EPA published a supplemental proposed rule (“December 2022 Supplemental Proposal”) that was composed of two main additions.⁶¹ First, the EPA

proposed further updates to NSPS OOOOb standards compared to those proposed in the November 2021 Proposal under CAA section 111(b) for GHGs (in the form of methane limitations) and VOC emissions from new, modified, and reconstructed facilities. Second, the EPA proposed further updates to the presumptive standards compared to those proposed for EG OOOOc in the November 2021 Proposal as part of the CAA section 111(d) EG for GHG emissions (in the form of methane limitations) from designated facilities. For purposes of EG OOOOc, the EPA also proposed implementation requirements for State plans developed to limit GHG pollution (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category under CAA section 111(d).

On March 8, 2024, the EPA published the March 2024 Final Rule with multiple separate actions intended to reduce GHG and VOC emissions from the Crude Oil and Natural Gas source category.⁶² First, the EPA finalized NSPS OOOOb regulating GHG (in the form of a limitation on emissions of methane) and VOC emissions for the Crude Oil and Natural Gas source category pursuant to CAA section 111(b). The NSPS codified in 40 CFR part 60, subpart OOOOb, are directly applicable to affected facilities that begin construction, reconstruction, or modification after December 6, 2022. Second, the EPA finalized the EG in OOOOc to limit GHG emissions. The EG codified in 40 CFR part 60, subpart OOOOc, applies to States in the development, submittal, and implementation of State plans to establish performance standards to reduce emissions of GHGs from designated facilities that are existing sources on or before December 6, 2022. Third, the EPA finalized several related actions (including final amendments to NSPS OOOOa stemming from congressional disapproval of the 2020 Policy Rule under the Congressional Review Act in 2021. Fourth, the EPA finalized a protocol under the General Provisions for OGI. The March 2024 Final Rule became effective on May 7, 2024, 60 days after publication in the **Federal Register**.

On August 1, 2024, the EPA published an IFR that made minor and non-substantive corrections to the March 2024 Final Rule in order to

correct identified inadvertent errors.⁶³ After publication of the March 2024 Final Rule, the EPA identified, through its own internal reassessment of the regulatory text, as well as through communications with stakeholders and the Office of the Federal Register, erroneous cross-references and typographical errors within the regulatory text. Through those same processes, the EPA also identified the need for some minor wording changes to clarify erroneous language (or, in some cases, erroneous omissions) in the regulatory text, and to ensure that the regulatory text aligns with the descriptions of the relevant provisions in the March 2024 Final Rule preamble and other parts of the regulation(s).

Further, after the publication of the March 2024 Final Rule, the EPA received multiple petitions for reconsideration.⁶⁴ On May 6, 2024, the EPA notified certain petitioners and the public that reconsideration had been granted on two narrow and discrete aspects of the March 2024 Final Rule: The temporary flaring provisions for associated gas in certain situations; and the vent gas NHV continuous monitoring requirements an alternative performance test (sampling demonstration) option for flares and enclosed combustion devices.⁶⁵ On January 15, 2025, the EPA proposed amendments for this Reconsideration and finalized amendments for this Reconsideration on April 9, 2026.^{66, 67}

On July 31, 2025, the EPA issued an IFR that extended deadlines for certain provisions related to control devices, equipment leaks, storage vessels, process controllers, and covers and CVS in the NSPS OOOOb.⁶⁸ The EPA also extended the date for future implementation of the Super Emitter Program. Finally, the EPA extended the State plan submittal deadline in the EG OOOOc. On December 3, 2025, the EPA promulgated a final rule reaffirming the extensions established in the July 2025 IFR, which extended several compliance deadlines in the NSPS OOOOb and EG OOOOc.⁶⁹ In addition to reaffirming the extensions in the July 2025 IFR, the EPA further extended the deadline for the NHV continuous monitoring requirements and for the alternative performance test (sampling demonstration) option for flares and

⁵⁷ The EPA characterizes the oil and natural gas industry operations as being generally composed of four segments: (1) Extraction and production of crude oil and natural gas (“oil and natural gas production”), (2) natural gas processing, (3) natural gas transmission and storage, and (4) natural gas distribution. 89 FR 16841.

⁵⁸ *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*; Proposed Rule, 86 FR 63110 (November 15, 2021).

⁵⁹ The EPA defines the Crude Oil and Natural Gas source category to mean: (1) Crude oil production, which includes the well and extends to the point of custody transfer to the crude oil transmission pipeline or any other forms of transportation; and (2) natural gas production, processing, transmission, and storage, which include the well and extend to, but do not include, the local distribution company custody transfer station, commonly referred to as the “city-gate.” 89 FR 16848.

⁶⁰ The term “designated facility” is defined as “any existing facility . . . which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility.” 40 CFR 60.21a(b).

⁶¹ *Standards of Performance for New, Reconstructed, and Modified Sources and*

Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review; Supplemental Notice of Proposed Rulemaking, 87 FR 74702 (December 6, 2022).

⁶² 89 FR 16820 (March 8, 2024).

⁶³ 89 FR 62872 (August 1, 2024).

⁶⁴ See Docket No. EPA–HQ–OAR–2025–0163 for petitions for reconsideration received.

⁶⁵ See Docket No. EPA–HQ–OAR–2025–0163 for May 6, 2024, letter granting reconsideration.

⁶⁶ 90 FR 3743 (January 15, 2025).

⁶⁷ 91 FR 18056 (April 9, 2026).

⁶⁸ 90 FR 35966 (July 31, 2025).

⁶⁹ 90 FR 55671 (December 3, 2025).

enclosed combustion devices and also extended the compliance deadline related to the initial annual reporting deadline.

This proposal is based on a record-focused reevaluation of certain determinations made in the March 2024 Final Rule. The EPA is proposing this action to provide near-term relief from certain regulatory requirements it now believes are predicated on erroneous BSER determinations, are not achievable, and/or are otherwise unreasonable. Addressing these issues in the near term is necessary to provide much needed clarity to new sources regulated under NSPS OOOOb, and to existing sources that will be subject to state plans under EG OOOOc, given the compliance deadlines and implementation schedules set in the March 2024 Final Rule, as subsequently extended.

The EPA acknowledges that stakeholders have also raised concerns about the Agency's underlying statutory authority to regulate GHG emissions from the Oil and Natural Gas source category under CAA section 111. In a separate and ongoing rulemaking for a distinct source category, the Agency is addressing statutory authority issues associated with its regulation of GHG emissions from fossil fuel-fired power plants under CAA section 111.⁷⁰ That rulemaking raises issues with respect to the scope of the Agency's authority under CAA section 111 but does not encompass or address NSPS or EG for the Crude Oil and Natural Gas source category, which operate in a distinct manner, have their own regulatory history, and involve different and additional considerations. Pending completion of the separate rulemaking addressing the EPA's statutory authority with respect to GHG emissions from the fossil fuel-fired power plant source category, the Agency would then address in a future rulemaking, as appropriate, the extent to which the conclusions in such action 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.

III. Summary and Rationale of Proposed Amendments to NSPS OOOOb and EG OOOOc

Sections III.A through III.K of this preamble present the background, the summary of proposed changes, and rationale for proposed amendments to the March 2024 Final Rule.

A. Super Emitter Program

As part of the March 2024 Final Rule, the EPA established a novel form of work-practice standard and compliance assurance mechanism known as the Super Emitter Program, which relies on third-party entities certified by the Agency to detect "very large emissions events" ⁷¹ using Agency-approved technologies and submit notifications to EPA personnel. The EPA transmits the third-party notification to relevant owners and operators, thereby triggering an obligation to investigate and to take any necessary corrective actions required under applicable standards. The EPA finalized this program as part of the 40 CFR part 60 NSPS subparts OOOO, OOOOa, and OOOOb and as part of the presumptive requirements applicable to state plans under EG OOOOc, meaning that States are expected to establish super emitter programs analogous to the EPA's. Upon reconsideration, the EPA no longer believes that the Super Emitter Program is well-grounded in policy and law and proposes to rescind the third-party certification, notification, and other related provisions in NSPS OOOO, OOOOa, and OOOOb and EG OOOOc.

In Section III.A.1 of this preamble, the EPA explains its initial conception of the program in the December 2022 Supplemental Proposal, comments received on this initial conception, and changes made to the program by the Agency in the March 2024 Final Rule. In Section III.A.2, the EPA explains the multiple potential bases for the proposed rescission of the Super Emitter Program. First, the EPA proposes to rescind the Super Emitter Program on policy grounds, including because the program has failed to meet the expectations the Agency had when it finalized the program in March 2024 and is unnecessary and ineffective. Second, the EPA also proposes to rescind the Super Emitter Program for legal reasons. While the EPA solicits comment on this proposal within this section, table 34 in section VII also summarizes all solicitations for comment for convenience.

1. Background

In the December 2022 Supplemental Proposal, the EPA sought public comment on a novel program intended "to trigger swift mitigation of super-emitter emissions events when they are identified through credible information provided by regulatory authorities or approved qualified third-party sources." ⁷² The EPA explained that it believed additional action was needed to address "super-emitter emissions events" citing one study finding "that the top five percent of sources contribute over 50 percent of the total emissions" from the source category, although it also acknowledged that results "vary by basin." ⁷³ This program, referred to at the time as the "super-emitter response program," adopted the concept of "Super-Emitters"—sources for which detected emissions are 100 kilograms per hour (kg/hr) or greater—and proposed a BSER of "[r]oot cause analysis and corrective action following notification of super-emitter emissions event." ⁷⁴ The EPA believed that the proposed requirements in the November 2021 Proposal and December 2022 Supplemental Proposal, "when implemented correctly, would result in reducing the number of super-emitter emissions events," but further proposed the "super emitter response program as a backstop to address the large contribution of super-emitters" to sector emissions. The EPA proposed two statutory bases for the program: first, that "super-emitters" are "a separate and distinct source of emissions" (and therefore a "designated facility"); and second, that the program "constitutes work practice standards for certain sources and compliance assurance mechanisms for other sources." ⁷⁵

The proposed "super emitter response program" generated significant public comment. As relevant here, certain commenters argued that the EPA lacked statutory authority to treat super-emitter events as an "affected facility" subject to standards separate and apart from affected facilities subject, on their own terms, to either the NSPS OOOO,

⁷⁰ See 91 FR 59002 (September 17, 2026); 90 FR 25752 (June 17, 2025). The EPA recently finalized a record-focused reevaluation and repeal of certain BSER determinations and associated standards for fossil fuel-fired power plants based on the alternative proposal presented in the June 2025 proposed rule. See 91 FR 58954 (September 17, 2026). The EPA has not yet taken final action on the primary proposal in the June 2025 proposal rule and intends to consider the statutory authority issues raised in that aspect of the proposed rule together with statutory authority issues raised in the Agency's recent supplemental proposal in a forthcoming final action addressing the Agency's authority to regulate GHG emissions from the fossil fuel-fired power plant source category.

⁷¹ 89 FR 16825 (March 8, 2024).

⁷² 87 FR 74706 (December 6, 2022); *id.* at 74706 n.5 (noting that the November 2021 Proposal "solicited comment on the use of information collected by communities and others to address large emissions events").

⁷³ 87 FR 74746 (December 6, 2022). Specifically, the EPA relied upon a March 2022 aerial survey of methane emissions in the New Mexico Permian Basin. See *id.* 74746 n.99 (citing Yuanlei Chen et al., "Quantifying Regional Methane Emissions in the New Mexico Permian Basin with a Comprehensive Aerial Survey," *Environmental Science and Technology*, Vol. 56, No. 7 (March 2022)).

⁷⁴ 87 FR 74708, 74711 (December 6, 2022).

⁷⁵ 87 FR 74712 n.9, 74752–54 (December 6, 2022).

OOOOa, and OOOOb or EG OOOOc.⁷⁶ Commenters raised concerns that this first-of-its-kind program would create regulatory obligations based on monitoring conducted by unaffiliated third parties, that the EPA had not clearly explained an adequate legal basis for the proposed program, and that the EPA had not explained how the program was consistent with the statute's specific provision for citizen enforcement in CAA section 304.⁷⁷ Commenters also argued that the EPA had not justified the 100 kg/hr threshold or explained how that threshold would work in practice given the short duration of super-emitter events and attribution difficulties.⁷⁸

The EPA finalized the program, with revisions, as the Super Emitter Program in the March 2024 Final Rule. The Agency reaffirmed its view that the program would be an additional tool to address super-emitter events, which it found may “contribute almost 50 percent of the methane emissions in the oil and gas sector.”⁷⁹ The Super Emitter Program was thus designed to serve as a backstop and a complement to other requirements of the NSPS OOOO, OOOOa, OOOOb, and EG OOOOc regulatory program to address large methane super-emitter events by directing operator attention to potential problems and to provide feedback to the EPA about the effectiveness of other regulatory requirements. The EPA defined a super-emitter event in 40 CFR part 60 subparts OOOO, OOOOa, OOOOb and EG OOOOc as “any emissions event that is located at or near an oil and natural gas facility (e.g., individual well site, centralized production facility, natural gas processing plant, or compressor station) and that is detected using remote detection methods and has a quantified emission rate of 100 [kg/hr] of methane or greater.”⁸⁰ In response to public comments, the EPA clarified that its

statutory authority for the program was CAA section 114(a), which authorizes the Agency to require “‘any person who owns or operates any emission source’ (except mobile sources) to provide information necessary for purposes of carrying out the CAA and its authority to regulate sources under CAA section 111.”⁸¹ The EPA further clarified that it would not treat super-emitter events as a distinct “affected facility” but was instead finalizing that the Super Emitter Program is “an additional work practice standard . . . for fugitive emissions at well sites, centralized production facilities and compressor stations” and as “an additional compliance measure” for “affected facilities” subject to NSPS OOOO, OOOOa, OOOOb, and EG OOOOc.⁸²

The EPA made changes to the Super Emitter Program from proposal in response to commenter objections about the role of unaffiliated third parties. Where an identified super-emitter event is attributable to a source regulated under CAA section 111 (NSPS OOOO, OOOOa, or OOOOb, or a state or Federal plan implementing EG OOOOc), the owner or operator is responsible for taking action in response to such notifications in accordance with the applicable regulation. Rather than authorizing certified third parties to send notifications to potential sources directly, the final regulations instead route notifications through the EPA in the first instance. Under 40 CFR 60.5398b(d), the EPA approves the remote-sensing technologies that may be used to identify relevant emissions events, and, consistent with the implementing regulations, may certify and de-certify third party notifiers. Certified third party notifiers may submit information to the EPA that they have collected about potential super-emitter events using EPA-approved remote-sensing technology in the form of a notification that is timely submitted and contains certain specified information on the methane release.⁸³ The EPA then reviews the submission, and if it determines that the submission is complete and does not contain information that it finds to be inaccurate to a reasonable degree of certainty, the EPA will provide the notification to the owner or operator of the relevant facility and make the notification publicly available on an EPA website, without owner or operator attribution.⁸⁴ Under

these provisions, owners and operators of facilities who receive notifications from the EPA who own or operate an oil and natural gas facility within 50 meters from the latitude and longitude provided in the notification, are required to initiate an investigation of any identified potential large methane emissions events at their site, report to the EPA the results of the investigation, and, if necessary, repair any leaks covered by certain requirements. Owners and operators of facilities who receive notifications from the EPA but who do not own or operate an oil and natural gas facility within 50 meters from the latitude and longitude provided in the notification, would report this to the EPA and no further action is required.⁸⁵ The EPA then posts the reports from the owners and operators on the same EPA website, including owner or operator attributions that were confirmed by the report.⁸⁶

Subsequent to the March 2024 Final Rule, several reconsideration petitioners continued to raise concerns about the Super Emitter Program. The EPA has received few requests for third party or technology certification, and as explained further below, now agrees with concerns raised during the prior rulemaking that the short duration of such events and established threshold render the program difficult to implement and ineffective at proactively addressing such events. In addition to those concerns, the EPA has experienced unanticipated difficulties and concerns in implementing this new program. To address those concerns, the EPA included in the 2025 IFR an extension of the date for future implementation of the Super Emitter Program until January 22, 2027. In a final action published on December 3, 2025, the EPA considered public comments on the extensions for the Super Emitter Program and reaffirmed the extensions.⁸⁷

2. Summary of Proposed Rescission and Rationales

The EPA is proposing to rescind the Super Emitter Program on several alternative policy and legal bases. First, the EPA now proposes that this novel program rests on insufficient evidence of the nature and duration of super-emitter events, defined as emissions of 100 kg/hr or greater, and that the same concerns that led the Agency to decline to treat “super emitters” as a distinct “affected source” call into question the

⁷⁶ API Comments on NSPS OOOOb and EG OOOOc 2022 Supplemental Proposal. February 13, 2023. EPA-HQ-OAR-2021-0317-2428. pg 98; and AXPC Comments on the 2022 Supplemental Proposal. February 13, 2023. EPA-HQ-OAR-2021-0317-2326. pg. 28.

⁷⁷ API Comments on NSPS OOOOb and EG OOOOc Supplemental Proposal. February 13, 2023. EPA-HQ-OAR-2021-0317-2428. pg 97; Texas Oil & Gas Association (TXOGA). (2022). “Comments on New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review; Proposed Rule.” January, 31, 2022. Pgs. 32–33; and TXOGA Comments of the 2022 Supplemental Proposal. EPA-HQ-OAR-2021-0317-2202. pg. 10.

⁷⁸ API Comments on NSPS OOOOb and EG OOOOc Supplemental Proposal. February 13, 2023. EPA-HQ-OAR-2021-0317-2428. pg. 99.

⁷⁹ 89 FR 16977 (March 8, 2024).

⁸⁰ 40 CFR 60.5371, 60.5371a, 60.5371b, 60.5388c.

⁸¹ 89 FR 16877 (March 8, 2024) (quoting 42 U.S.C. 7414(a)).

⁸² *Id.*; see also *id.* at 16877–78.

⁸³ See 40 CFR 60.5371b.

⁸⁴ *Id.*; see also 40 CFR 60.5371, 60.5371a, and 60.5388c.

⁸⁵ See, e.g., 40 CFR 60.5371(a)(1), 60.5371a(a)(1), 60.5371b(d)(1), and 60.5388c(a)(1).

⁸⁶ See, e.g., 40 CFR 60.5371b.

⁸⁷ 90 FR 55671 (December 3, 2025).

conceptual basis and need for the program in the first instance. Second, the EPA further proposes that the program is not necessary and provides limited additional value in light of the other requirements applicable to affected sources under NSPS OOOO, OOOOa, OOOOb, and EG OOOOc. Third, the EPA proposes that the Super Emitter Program is not effective and is overly broad as designed. Fourth, the EPA proposes that the statutory authority bases finalized in the March 2024 Final Rule are inadequate to maintain the program. Specifically, as explained below, the EPA has concerns that the program features an inappropriate role for third parties, does not properly function as a work practice standard, and does not properly function as a compliance measure.

If finalized, the proposed rescission would remove provisions related to the Super Emitter Program, including for certification and decertification of third parties, certification and decertification of third-party monitoring technologies, and a source's obligations to respond in the event of a notification received pursuant to the Super Emitter Program, from 40 CFR part 60, subparts OOOO, OOOOa, OOOOb, and OOOOc.

The EPA proposes that additional information and further study are required to evaluate the underlying premise of the Super Emitter Program, that is, the assertion that "super-emitter events" (defined as emissions of 100 kg/hr or greater) from a select few sources are responsible for the majority of source-category emissions. In the March 2024 Final Rule, and specifically in the December 2022 Supplemental Proposal, the EPA believed that "the top five percent of sources contribute to over 50 percent of the total emissions" from the source category because of super-emitter events.⁸⁸ For this conclusion, the Agency relied on a single study consisting of 2018–2020 aerial surveys of the New Mexico Permian Basin that acknowledged its results departed from those in previous studies and did not endeavor to differentiate among the regulatory status of emission sources or potential causes for the emissions. While informative, the novel analytical approach and results of this study had not been thoroughly vetted at the time of the December 2022 Supplemental Proposal, and the EPA did not revisit the question of the study's quality and utility in the March 2024 Final Rule. Indeed, the Agency acknowledged at the time that results vary by basin and involve a number of different potential causes and explanations depending on

the nature and regulatory status of the potential source(s).⁸⁹ At the time of the March 2024 Final Rule, the EPA did not have adequate information on the prevalence, nature, duration, and cause of large emission events, without which the program cannot effectively further legitimate policy ends, and thus, the EPA proposes to rescind the Super Emitter Program. While the Agency is aware of some additional information that has become available on this topic since the March 2024 Final Rule, the Agency proposes to conclude that information indicates that the Super Emitter Program is overly broad as designed, as explained below, which is a separate reason for its proposed rescission. The Agency specifically seeks comment providing additional studies and information bearing on super-emitter events and corresponding strategies to address them, including whether the EPA should treat them separately as a regulatory manner in the first instance and, if so, whether and which threshold the EPA should use to separately consider such events. (Question III.1a)

Separately, the EPA no longer believes that the Super Emitter Program is necessary in light of the emission-limitation, monitoring, and mitigation requirements applicable to affected sources. As described in the record for the March 2024 Final Rule, the program was finalized as an additional work practice standard under NSPS OOOOb (and presumptive standard under EG OOOOc), and as an additional compliance assurance measure for other NSPS OOOOb affected facilities, NSPS OOOO and OOOOa affected facilities, and designated facilities under EG OOOOc. The Agency asserted at the time that the program could be a helpful supplement to requirements already applicable to affected facilities because super-emitter events are unpredictable and may not be detected immediately, and thus the Agency believed that providing timely notifications of them to operators could assist in addressing these events.⁹⁰ However, the EPA also concluded that the NSPS requirements and EG presumptive standards included in the March 2024 Final Rule would prevent large emission events (e.g., design and operation requirements for flares) or detect and mitigate most of these large emissions events (e.g., through regular monitoring for fugitive emissions)⁹¹ and did not explain why the Super Emitter Program was necessary as a work-practice standard or

compliance assurance mechanism for affected facilities already required to identify and correct aberrant emissions events.

Even considering the amendments proposed in this proposed rule, the EPA continues to believe that other requirements in the NSPS OOOOb and the EG OOOOc will be more than sufficient to prevent, detect, and mitigate most large emission events that would be within the scope of the Super Emitter Program. Those requirements include, for example, zero-emissions standards for process controllers at high production sites and design and operation requirements for flares, combined with regular monitoring for fugitive emissions, process upsets on tanks, and malfunctioning controllers. For example, many of the persistent super-emitter events identified in recent studies are from flares and tank systems^{92,93} and the other compliance assurance requirements in the March 2024 Final Rule address several issues that may lead to these types of large emission events. These include compliance assurance requirements for flares and enclosed combustors that include a requirement for a continuous burning pilot flame that must be confirmed through monthly visual emissions testing or the continuous use of video surveillance cameras.⁹⁴ Real-time monitoring or monthly testing is expected to be sufficient to detect malfunctioning flares and support compliance with the applicable requirements, making the possible detection of such emissions by a third-party unnecessary from a compliance assurance perspective. As these examples illustrate, provisions in the March 2024 Final Rule are expected to prevent many such events and provide timely and actionable information on events that would be within the scope of the Super Emitter Program, as well as adequately supporting operators to identify such events.

Along with these provisions, the Alternative Test Method (ATM) program is expected to further support the identification of super-emitter events. Under that program, owners and operators have the option to use EPA-approved advanced methane detection

⁹² Cusworth, D.H. et al. (2026). Duration of super-emitting oil and gas methane sources. *Nat. Commun.* 2026 Jan 24;17(1):2011. doi: 10.1038/s41467-026-68804-7. PMID: 41580397; PMCID: PMC12936207. <https://pubmed.ncbi.nlm.nih.gov/41580397/>.

¹⁰⁰ Cusworth, D.H. et al. (2021). Intermittency of Large Methane Emitters in the Permian Basin. *Environ. Sci. Technol. Lett.* 13 July 2021; 8(7): 567–573. <https://doi.org/10.1021/acs.estlett.1c00173>.

⁹⁴ The EPA is not proposing to amend these requirements in this proposed rule.

⁸⁸ 87 FR 74746–47 (December 6, 2022).

⁸⁹ *Id.*

⁹⁰ 87 FR 74748 (December 6, 2022).

⁹¹ 87 FR 74747 (December 6, 2022).

and measurement systems to complete the required monitoring. There are currently 18 approved alternative technologies that include periodic airborne remote sensing surveys that can detect super-emitter events and lower-level emissions with improved accuracy and source specificity compared to most satellite techniques.⁹⁵ Importantly, these survey approaches provide actionable emission event data directly to the operator, greatly reducing lag time associated with EPA notification under the current Super Emitter Program. In addition to periodic monitoring options, emerging semi-continuous monitoring approaches utilizing 24/7 onsite sensing techniques may be able to provide rapid detections of high emitter events yielding enhanced diagnostic capability for operators. Because monitoring under the ATM program is site specific, the emission information delivered is directly relevant to the affected source categories. With monthly, bimonthly, or quarterly monitoring requirements (depending on technology sensitivity), the ATM program provides an effective check for super-emitter events. Based on the ATM program application rate, the EPA anticipates increased participation in the program over time, which can support the timely identification of super-emitter events.

In addition, the EPA no longer believes, given experience with implementation of the program and the limited additional information in the scientific literature, that the Super Emitter Program is effective in addressing the events the Agency previously feared would not be adequately captured or addressed by other requirements due to implementation issues and the overly broad nature of its design. As noted in the 2025 IFR, the EPA experienced unanticipated difficulties and concerns in implementing the Super Emitter Program. In the 2025 IFR, the EPA explained that the third-party notifier is not required to provide attribution of who owns or operates a site. In practice this has meant the EPA needed to identify the owner/operator before it can provide them with the notification, reducing the ability of the EPA to provide timely notification of these events to the owner/operator. Additional Super Emitter Program implementation issues have impacted the overall anticipated effectiveness of the program. For example, the Agency expected that the program would

generate sufficient interest from multiple third-party notifiers and that data collected using the EPA-approved remote sensing technologies (e.g., satellites) would lead to expeditious and effective mitigation of super-emitter events by owners and operators. As stated in the March 2024 Final Rule, in response to comments, the EPA emphasized that the Super Emitter Program would only authorize third parties to use remote sensing technologies, not technologies that would require close access to such facilities. The EPA specifically identified satellites and aircraft as technologies that would play a fundamental role in the ATM program. At the time of the March 2024 Final Rule publication, several satellites capable of detecting methane were already in operation and additional satellites, including commercial and non-profit satellites were anticipated to be launched. The Agency expected that the availability of these systems would contribute to providing the broad coverage essential to the effectiveness of the ATM program as a compliance assurance tool. The EPA anticipated that the participation of third parties with a range of remote sensing technologies would strengthen the ATM program's ability to identify large emission events and thereby support compliance with NSPS OOOO, OOOOa, OOOOb and the EG OOOOc presumptive standards. However, the EPA only received three technology applications from remote sensing companies for use in the Super Emitter Program, since the program began accepting applications in March 2024.⁹⁶ Additionally only one entity has requested and become a certified third party under the Super Emitter Program.⁹⁷ With only one third party certified and no other entities requesting third party certification, the Program is not expected to achieve the coverage originally envisioned and thus, would not function as the effective compliance assurance tool.

In addition, with respect to the program's scope, the EPA notes that the Super Emitter Program, as designed, is overly broad, mostly capturing permissible events where no action is required or other short-term events that have already been resolved and thus, would not be effective in addressing events the Agency previously feared would not be adequately captured or addressed by other requirements. In the

March 2024 Final Rule, the EPA finalized requirements that the notification must be supplied to the EPA within 15 days after the detection event in order to provide actionable information to owners or operators.⁹⁸ However, early program implementation experience demonstrated that, in most cases where the EPA issued a notification under the Super Emitter Program (six out of seven total notifications sent), the owner or operator received the notification after the event had ended. This aligns with a recent study, which indicates that most super-emitter events persist only for short periods, typically on the scale of hours, and are often attributable to routine process or maintenance events.⁹⁹ Given the inherent lag between the occurrence of a large emission event, the detection and attribution process, and the operator's receipt of a notification, many notifications from the Super Emitter Program would be expected to arrive after the event has already been resolved. Although at the time of the March 2024 Final Rule, the EPA understood that many large emission events are intermittent events,¹⁰⁰ the Agency now expects that in the majority of cases, the notifications will pertain to these types of events instead of focusing on events that the EPA was previously concerned would not be mitigated by the other provisions in the NSPS OOOO, OOOOa, OOOOb, OOOOc and the emission guidelines. Additionally, the delay between event identification and notification, resulting in notifications that arrive well after the event has ended, can create additional practical challenges for operators attempting to determine the cause of the event identified. Based on these factors together with the minimal third-party participation, the EPA proposes to conclude that the Super Emitter Program, as designed, is not effective. The EPA's proposal regarding the program's lack of effectiveness alters the EPA's understanding of the significance of the burden on owners/operators due to requirements to respond to notifications about permissible activities. If the Program cannot reliably distinguish true super emitter events from permissible releases or routine maintenance activities, operators may be required to use resources to respond to notifications for which no corrective

⁹⁸ 89 FR 16920 (March 8, 2024).

⁹⁹ Cusworth, D.H., et al. (2026). Duration of super-emitting oil and gas methane sources. Published online: January 24, 2026. Nat. Commun. 2026 Jan 24;17(1):2011. doi: 10.1038/s41467-026-68804-7. PMID: 41580397; PMCID: PMC12936207. <https://pubmed.ncbi.nlm.nih.gov/41580397/>.

¹⁰⁰ 89 FR 16904, 16920 (March 8, 2024).

⁹⁵ Information on EPA-approved alternative technologies can be found at: <https://www.epa.gov/emc/oil-and-gas-alternative-test-methods>.

⁹⁶ Third-Party Certifications. <https://www.epa.gov/emc/third-party-certifications>.

⁹⁷ <https://www.epa.gov/system/files/documents/2025-01-matm001-carbon-mapper-aerial-survey.pdf>.

action is required, such as gas well liquids unloading events.

For these reasons, the EPA proposes to conclude that the Super Emitter Program is not necessary to retain and does not function effectively as a compliance assurance tool. To the extent that the Administrator believes additional information is required to help assure compliance with, or identify potential violations of, requirements under the CAA and its implementing regulations, or otherwise seeks to obtain additional information on super-emitter events, the EPA may rely on other information collection or compliance assurance tools, such as CAA section 114 information collection requests under the authority expressly provided under the CAA. Further, anyone who wishes to submit information to the EPA about methane releases remains free to do so, even without the mechanism of the Super Emitter Program.

The EPA further proposes, as a separate potential basis for repeal, that portions of the Super Emitter Program lack an adequate legal basis under the CAA. At the very least, the EPA did not fully articulate a clear legal basis for all portions of the program in the March 2024 Final Rule. The EPA explained its legal authority for establishing the program in this way:

[T]he EPA's authority to require sources (regardless of whether those sources are regulated under CAA section 111) to investigate potential sources of super-emitter events and report to the EPA is CAA section 114. The EPA's authority to require regulated sources to repair or otherwise address the cause of the super-emitter event is CAA section 111. In particular, for sources regulated under CAA section 111, the Super Emitter Program will serve as: (1) an additional work practice standard under NSPS OOOOb (and presumptive standard under EG OOOOc) for fugitive emissions at well sites, centralized production facilities and compressor stations, and as (2) an additional compliance assurance measure for other NSPS OOOOb affected facilities, NSPS OOOO and OOOOa affected facilities, and designated facilities under EG OOOOc.¹⁰¹

Despite this broad assertion of authority, certain regulatory provisions at the heart of the program do not appear to be authorized by either CAA section 111 or 114.

First, CAA section 114 is comprised of a few different, but interlocking, elements. CAA section 114(a)(1) specifies that the EPA “may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information

necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter,” (except for manufacturers subject to certain title II requirements, who are subject to CAA section 208), to produce and provide certain information. These are the groups of “person[s]” from whom the EPA can collect information under CAA section 114. Further, CAA section 302(e) defines “person” to include “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.”

Second, CAA section 114 specifies that the EPA may require “any person,” in one of the groups described above, to “establish and maintain such records . . . make such reports . . . install, use, and maintain such monitoring equipment . . . sample such emissions . . . keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical . . . submit compliance certifications . . . and . . . provide such other information as the Administrator may reasonably require.”¹⁰² Third, with respect to the timing, or frequency, of data collection, CAA section 114(a)(1) specifies that the EPA may require this information “on a one-time, periodic or continuous basis.” And fourth, CAA section 114(a) specifies that the EPA may collect information in accordance with the parameters explained above for the purposes of: (i) developing or assisting in the development of any implementation plan under CAA sections 110 or 111(d), or any emission standard under CAA sections 111 or 112 or any regulation under CAA section 129; (ii) determining if any person is in violation of any such standard or any requirement of an implementation plan; or (iii) “carrying out any provision” of the CAA (with the exception of certain provisions under title II of the CAA).

When describing the Super Emitter Program, the first several “major elements” of the program that the EPA listed do not appear to fit within the framework laid out by CAA section 114.¹⁰³ These elements include (a) qualifications for third-party notifiers, (b) third-party notifier certification, and (c) notifications of super-emitter events (which includes a description of self-imposed EPA regulatory obligations). For purposes of NSPS OOOOb, these elements can be found in the regulations at 40 CFR 60.5371b(a), (b), and (c),

respectively. As previously noted, the March 2024 Final Rule also required States to establish comparable programs.

While all components of the Super Emitter Program were designed to work together, the first two elements are closely related. The first element of the program includes the regulations regarding qualifications for third-party notifiers, which state that “[a]n entity may apply . . . for approval as a third-party notifier.”¹⁰⁴ The second element is a lengthy regulatory provision detailing the certification, and de-certification, process for third-party notifiers, and states that “[a]n entity . . . may apply to be certified as a third-party notifier.”¹⁰⁵ Neither of the regulatory provisions for these program elements appear to fit within the ambit of CAA section 114 because both provisions involve voluntary actions. No entity is required to become, or apply to become, a certified third-party notifier. While CAA section 114 allows the EPA to require certain information from certain entities under certain conditions, it does not speak to establishing criteria and procedures for the certification, and de-certification, of entities who might *voluntarily* choose to provide information to the EPA. CAA section 114 states that the EPA “Administrator may require” certain entities to complete enumerated tasks and provide certain information, but these provisions do not require anyone to do anything; they merely list criteria and a process to become “certified” to submit information to the EPA if an entity so desires. This voluntary certification process is not contemplated by CAA section 114. As such, these regulations do not appear to fit within the scope of EPA's authority under CAA section 114. Nor do they appear to justify requiring States to establish comparable programs. To be clear, the Super Emitter Program did not change the ability of any person to submit any information they would like to the EPA at any time outside the auspices of the program, and no such certification or particular qualifications are required for such submissions.

Further, the record for the March 2024 Final Rule provides no explanation of how these provisions derive authority from CAA section 114. The closest explanation in the March 2024 Final Rule states that “[i]t is the EPA's long-standing position that ‘information will be considered to have been provided . . . under section 114 of the Act . . . if its submission could have been

¹⁰² 42 U.S.C. 7414(a)(1)(A)–(G).

¹⁰³ 89 FR 16879–80.

¹⁰⁴ 40 CFR 60.5371b(a).

¹⁰⁵ *Id.* 60.5371b(b).

¹⁰¹ 89 FR 16877.

required under section 114”¹⁰⁶ But this statement relates to whether the EPA could require the submission of information on a super-emitter event from a third party, not whether CAA section 114 provides authority to establish criteria and processes regarding the voluntary submission of information.

Likewise, 40 CFR 60.5371b(c) does not appear to fit within EPA’s authority under CAA section 114. Most relevant here, that provision binds the EPA to take certain actions triggered by the submission of a notification to the Agency from a certified third party. For example, it requires that “[t]he EPA will review the submitted notifications” and that “EPA will assign the notification” a report number.¹⁰⁷ Similarly, the introductory text in 40 CFR 60.5371b imposes obligations on the EPA by stating that the agency “shall” review notifications received from certified third parties, assign the notification an identification number, and post information on an EPA web page. CAA section 114 does not appear to contemplate EPA authority to promulgate a regulation or establish procedures that obligate the agency to take certain steps upon action from parties outside the EPA. Thus, these provisions appear to be outside the scope of EPA’s authority under CAA section 114.

In addition to CAA section 114, in the March 2024 Final Rule, the EPA stated that the legal authority for the Super Emitter Program also derived from CAA section 111 in two respects: as an additional work practice standard and as an additional compliance assurance measure. However, the same regulatory provisions discussed above do not appear to fit within either category under CAA section 111. First, the EPA stated that it had “incorporated the Super Emitter Program, in particular the requirement to repair fugitive emissions components that are sources of super-emitter events, as a part of the BSER and therefore work practice standards for fugitive emissions components affected/ designated facilities under NSPS OOOOb/EG OOOOc.”¹⁰⁸ The EPA’s discussion of this issue in the March 2024 Final Rule is limited and does not explicitly take the position that third-party certification, criteria for certification, or EPA’s self-imposed regulatory obligations are themselves part of the “best system of emission reduction” for an affected source. Put another way, the regulations at 40 CFR

60.5371b(a)–(c), which establish the process for certifying third-party notifiers, do not seem to flow from the EPA’s standard-setting authority in CAA section 111 as none of these processes appear to be part of the “standard of performance” as defined by CAA section 111(a)(1). Again, these processes are all voluntary in the sense that no entity is required to apply to the EPA to become a certified third-party notifier, and no certified third party is required to send the EPA any notifications under the Super Emitter Program. The March 2024 Final Rule contains no explanation of how the EPA’s standard-setting authority could be the source of authority for these voluntary processes.

The EPA acknowledges that “[e]missions from certain fugitive emissions components can be significant (as one example, a stuck-open thief hatch) and can remain undetected until the next scheduled periodic monitoring.”¹⁰⁹ However, we now propose to conclude that the Super Emitter Program is not essential to addressing those emissions (*i.e.*, it is not necessary to utilize the program as an additional work practice standard) because there are already mechanisms in the regulations to address such emissions when they become known to owners and operators of affected sources. For example, 40 CFR 60.5397b(h) requires the repair of “each identified source of fugitive emissions” regardless of when the source of the fugitive emissions is identified. In addition, 40 CFR 60.5370b(b) requires that owners and operators “[a]t all times . . . maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.”¹¹⁰

Moreover, CAA section 111 does not provide legal authority to establish the Super Emitter Program’s certification procedures as an additional compliance assurance measure. In the March 2024 Final Rule, the EPA asserted that the Super Emitter Program would serve as a compliance assurance measure for sources that are not fugitive emissions components affected/ designated facilities under NSPS OOOOb/EG OOOOc. The EPA reasoned that, although design, operational, monitoring, recordkeeping, and reporting requirements under other applicable sources of law already obligated such sources to identify and correct emissions events, super-emitter events “are unpredictable” and “can

occur between routine inspections and release significant emissions in a short span of time.”¹¹¹ The EPA then concluded that the Super Emitter Program could “serve as an additional source of monitoring data to inform and alert owners and operators” to check for compliance with applicable Federal or State requirements.¹¹² However, each standard within the March 2024 Final Rule already has its own set of compliance assurance mechanisms to ensure compliance with the applicable standards. Further, if a source owner or operator becomes aware that they might be operating out of compliance, it is in their interest to investigate and take corrective action, if needed. As previously noted, the processes and criteria for certifying third-party notifiers do not themselves ensure compliance with any standard, so CAA section 111 does not appear to provide authority for 40 CFR 60.5371b(a)–(c).

Finally, the EPA proposes that the Super Emitter Program was not contemplated by the citizen-enforcement provision in CAA section 304—the provision of the statute (in addition to public-participation requirements) in which Congress addressed the role of citizens in implementation of the CAA. Notifications submitted by third parties pursuant to the Super Emitter Program are sent to the EPA in the first instance, where they undergo an initial EPA review, and are then transmitted by the EPA to relevant owners and operators. However, the EPA is concerned that the third-party certification and notification procedures could improperly elevate certain unaffiliated third parties over others and confer special status that Congress did not contemplate in any provision of the CAA. Under CAA section 304, citizens may bring actions on their own behalf alleging any violation of applicable standards, including those in NSPS OOOO, OOOOb, or EG OOOOc, to the extent those standards have been implemented and are federally enforceable. In authorizing such actions, Congress provided a number of constraints and guardrails, including a requirement to provide 60-day advance notice to the EPA prior to commencing a citizen suit and a venue provision specifying that citizen suits may only be brought in federal district court.¹¹³ By nature of being brought in Federal district court, such matters are subject to generally applicable evidentiary rules and standards for adjudicating such

¹⁰⁶ 89 FR 16916 (quoting 40 CFR 2.301(b)(2)).

¹⁰⁷ 40 CFR 60.5371b(c).

¹⁰⁸ 89 FR 16878 (March 8, 2024).

¹⁰⁹ *Id.*

¹¹⁰ See also 40 CFR 60.11(d).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See 42 U.S.C. 7604(a)(1), (b), (c).

allegations. None of these provisions contemplate endowing particular entities with the status of certified monitors for purposes of ensuring compliance, as the Super Emitter Program does. The EPA proposes that the CAA's provisions for citizen involvement in enforcement are the appropriate avenue for citizen participation in such matters. The EPA now believes that third-party certification could have an unintended influence on enforcement actions, including with respect to a district court's review of a citizen action brought by a certified third-party. That is, the EPA is concerned that status as a certified third-party could inaccurately and improperly suggest that a citizen action has been endorsed by the Agency, implicitly or otherwise. In this way, the Super Emitter Program risks empowering unaffiliated third parties to exercise an enhanced enforcement role that the EPA did not intend to establish in finalizing the Super Emitter Program and appears to lack a statutory basis.

The same reasoning explained above extends to all regulations where the EPA included provisions from the Super Emitter Program, such as provisions at 40 CFR 60.5371, 40 CFR 60.5371a, 40 CFR 60.5371b, and 40 CFR 60.5388c.

Accordingly, for the reasons described above, the EPA proposes to repeal the Super Emitter Program. The Super Emitter Program includes requirements under NSPS OOOO, OOOOa, OOOOb and EG OOOOc. As such, the EPA specifically proposes to remove the Super Emitter Program provisions at 40 CFR 60.5371, 40 CFR 60.5371a, 40 CFR 60.5371b, and 40 CFR 60.5388c. The EPA also proposes to remove references to these provisions at 40 CFR 60.5398b(d), and 60.5420b(b)(14); and 40 CFR 60.5420c(b)(14); and in the definition of "[a]verage aggregate detection threshold" in 40 CFR 60.5430b and 40 CFR 60.5430c. Lastly, the EPA proposes to remove reference to the Super Emitter Program in table 1 to subpart OOOOc of 40 CFR part 60. The EPA solicits comment on this proposal (Question III.1a), including any comments related to the policy merits of the Super Emitter Program and to the EPA's legal bases for the Super Emitter Program.

B. Liquids Unloading

1. Background

Under the March 2024 Final Rule, both the NSPS OOOOb and EG OOOOc require each affected and designated gas well facility that unloads liquids to employ techniques (e.g., manual

unloading steps taken to unload liquids) or technology(ies) (e.g., plunger lift systems, surface jet pumps, velocity strings) that minimize or eliminate venting of emissions during liquids unloading events. As an alternative, owners or operators may comply with the GHG and VOC standards by routing vented emissions to a control device that reduces methane and VOC emissions (methane only for designated facilities) from each gas well liquids unloading event by 95.0 percent.

For unloading technologies or techniques that could result in venting to the atmosphere, the March 2024 Final Rule requires owners or operators to follow certain work practices. The March 2024 Final Rule requires that owners or operators employ and document best management practices to minimize venting of methane and VOC emissions for each gas well liquids unloading operation. Specifically, owners or operators of affected and designated gas well facilities that undergo liquids unloading events must develop, maintain, and follow a best management practice plan to minimize venting of methane and VOC emissions (methane only for designated facilities) to the maximum extent possible from each gas well liquids unloading operation. This best management practice plan must meet the following minimum criteria: (1) include steps that create a differential pressure to minimize the need to vent a well to unload liquids; (2) include steps to reduce wellbore pressure as much as possible prior to opening the well to the atmosphere; (3) unload liquids through the separator where feasible; and (4) close all wellhead vents to the atmosphere and return the well to production as soon as practicable. The standards are the same for the NSPS and the EG.

Where liquids unloading events are conducted using a technology or technique that eliminates venting to the atmosphere, the March 2024 Final Rule requires owners and operators to report the identification of the well along with the non-venting technology or technique used in their annual report. If more than one non-venting method is used, the March 2024 Final Rule requires that owners and operators maintain records of all the differing non-venting liquids unloading methods used at the well affected/designated facility.

When unplanned venting occurs from these wells during a compliance period, an owner or operator is required to follow their best management practices plan for such events and comply with the associated recordkeeping and reporting requirements for those events.

The March 2024 Final Rule requires owners and operators to maintain records for the number of unplanned events where emissions are vented to the atmosphere during a liquids unloading operation. The March 2024 Final Rule requires owners and operators to provide the above recordkeeping information to the EPA in their annual report.

2. Additional Background and Summary of Proposed Changes and Rationale

Petitioners raised two issues for reconsideration on the March 2024 Final Rule liquids unloading requirements.^{114 115} First, petitioners disagreed with the EPA's promulgated reporting and recordkeeping requirements for liquids unloading events for non-emitting equipment or activities. Second, petitioners argued that the alternative compliance option for GHG and VOC reduction standards—allowing an owner or operator to route emissions to a control device via a CVS—imposes inappropriate ongoing compliance assurance requirements when applied to normally intermittent liquids unloading activities. Sections III.B.2.a and III.B.2.b of this preamble provide additional background, a summary of proposed changes, and rationale for proposed changes for both of these issues.

a. Recordkeeping and Reporting Requirements for Non-Emitting Operations

Background. Petitioners asserted that the presence of emissions is inherent in the definition of standard of performance and that a source without emissions cannot be subject to such a standard of performance.¹¹⁶ Petitioners also stated that the EPA itself recognized its inability to regulate these non-venting events when it "streamlined recordkeeping and reporting requirements" based on concerns raised during the comment period for the March 2024 Final Rule.¹¹⁷ Specifically, the petitioner quoted the EPA's Response to Comments for the

¹¹⁴ API & AXPC (2024a). Re: Provisions in EPA's Final Rule "New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review." Creating Immediate Compliance and Implementation Issues. April 5, 2024.

¹¹⁵ API & AXPC (2024b). Re: Request for Administrative Reconsideration of EPA's Final Rule "New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review" May 6, 2024. pgs. 33–34.

¹¹⁶ API & AXPC (2024b). Re: Request for Administrative Reconsideration of EPA's Final Rule "New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review" May 6, 2024. pgs. 33–34.

¹¹⁷ 89 FR 16956 (March 8, 2024).

March 2024 Final Rule as stating that the Agency agreed that “requiring an owner or operator to comply with some of the proposed recordkeeping and reporting requirements in instances where an unloading event does not result in venting to the atmosphere would impose a burden without any added benefit environmentally . . .”¹¹⁸ Petitioners argued that based on these reasons, the EPA should remove all recordkeeping and reporting requirements associated with non-venting activities and equipment.

Summary of Proposed Changes and Rationale. In promulgating the March 2024 Final Rule, the EPA considered commenters’ concerns and the examples provided regarding the burden associated with the liquids unloading operations’ recordkeeping and reporting requirements proposed in 2022. In the March 2024 Final Rule, the EPA streamlined recordkeeping and reporting requirements in some instances where an unloading event does not result in venting to the atmosphere and where such requirements would impose a burden without providing any environmental benefit (e.g., requiring operators to track and report the number of liquids unloading events that occurred when implementing a non-venting liquids unloading technology or technique). Where liquids unloading events are conducted using a technology/technique that eliminates venting to the atmosphere, the March 2024 Final Rule requires owners and operators to report the identification of the well along with the non-venting technology or technique used in their annual report, while continuing to comply with the applicable recordkeeping requirements for those events. Where unplanned venting occurs from these wells during a compliance period, an owner or operator is required to follow their best management practices plan for such events and comply with the associated recordkeeping and reporting requirements for those events.

The EPA proposes to further eliminate the reporting requirements for non-venting liquids unloading well site events, while maintaining the recordkeeping requirements for these events in both the NSPS OOOOb and EG OOOOc due to the continued possibility of an unplanned venting event. The EPA proposes changes to 40 CFR

60.5376b(a)(1) and 60.5420b(c)(2)(i) of NSPS OOOOb, and 40 CFR 60.5390c(a)(1) and 60.5420c(c)(1)(i) of EG OOOOc. Specifically, the EPA proposes that the NSPS OOOOb and EG OOOOc continue to require that owners and operators maintain records of the identification of each well (i.e., U.S. Well ID or U.S. Well ID associated with the well affected facility) that conducts a gas well liquids unloading operation during the reporting period without venting of methane and/or VOC emissions and the non-venting gas well liquids unloading method used. These records, which EPA understands would already be retained as part of normal site operations records/documentation, do not constitute a burdensome requirement. The EPA solicits comment on this proposal. (Question III.2a)

The EPA is also soliciting comment on repealing part or all of the recordkeeping and reporting requirements for liquids unloading in NSPS OOOOb, and the corresponding presumptive requirements in EG OOOOc. The Agency’s ICR associated with the March 2024 Final Rule anticipated that the recordkeeping and reporting burdens associated with liquids unloading would increase significantly over the first three years of implementation. The EPA seeks comment on whether those projected costs have materialized, and if so, which provisions are the most burdensome and whether the costs may warrant further revisions in relation to the purposes of the requirements. (Question III.2b)

b. Control Device Compliance Requirements

Background. Petitioners stated that while they generally support the work practice procedures finalized in 40 CFR 60.5376b, they do not support the covers, closed vent and control device compliance assurance requirements at 40 CFR 60.5376b(g), which are associated with the alternative compliance option of routing vented emissions to a control device.¹¹⁹ While the petitioners do not oppose including the alternative compliance option, they assert that the associated ongoing compliance assurance requirements are inappropriate. They explain that, when implementing the work practice procedures to reduce emissions from well liquid unloading activities as specified in 40 CFR 60.5376b(b) through (f), operators will review the characteristics of the well at the time of the event. If certain conditions (e.g., operator safety, equipment malfunctions) are present, an operator

may need to deviate from a planned option for minimizing emissions and instead route gas to a temporary flare to minimize emissions and further reduce the amount of gas that would be vented by 95.0 percent. Petitioners noted that, given the short-term nature of liquids unloading events, the ongoing compliance assurance related to both a CVS and control device would be inappropriate since many of the activities would be forced to occur when liquids unloading activities are not even occurring (e.g., CVS inspections). They contended that it would also be untenable to schedule and manage these activities during unloading events given their variable and short duration. Petitioners recommended that the EPA authorize the use of a temporary flare or portable control device to handle emissions from liquids unloading. Specifically, they suggested that, due to the temporary nature of these activities, the control device compliance requirements should mimic those utilized for well completions affected facilities, i.e., a requirement to operate with a reliable continuous pilot flame during the liquid unloading activity. Petitioners noted that a temporary control device is typically used when the permanent control device is down for maintenance (e.g., during a gas plant turnaround) or to reduce emissions from intermittent activities (e.g., liquids unloading where feasible). In general, the petitioners stated that the March 2024 Final Rule does not specifically address temporary control devices, and as such, temporary control devices would presumably have to meet what they argue are untenable monitoring and performance testing requirements required under the rule for these control devices. Therefore, the petitioners urged the EPA to revise the March 2024 Final Rule to clearly exempt temporary control devices from the monitoring and performance testing requirements required under the rule for these control devices.

Summary of Proposed Changes and Rationale. For liquids unloading operations, the initial and supplemental proposals for the March 2024 Final Rule did not include an option to route emissions to a flare/control device. The March 2024 Final Rule introduced an additional means of complying with the GHG and VOC standards by reducing methane and VOC emissions from each gas well liquids unloading event by 95.0 percent by routing emissions to a control device via a CVS. This option was added in response to comments requesting that routing to a control device be allowed, noting that the

¹¹⁸ U.S. EPA. (2023b). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule. See Response I-12-33.

¹¹⁹ API & AXPC. (2024a).

emissions reduction that would be achieved could be greater than or equal to those achieved through the implementation of best management practices (BMPs). The EPA acknowledges the practical implications of requiring the same control device compliance assurance requirements that were developed for control devices where emissions are routed to a permanent control device to also apply where emissions are routed to a temporary control device. For the same reasons specified by the petitioners, the EPA proposes to determine that it is warranted to develop different control device and compliance provisions that acknowledge the differences between permanent and temporary control devices. As such, the EPA proposes to allow routing of vented gas to a temporary control device during liquids unloading operations with streamlined compliance assurance requirements. *See* section III.H.1.e (Temporary Control Devices and Backup Control Devices) of this preamble for a detailed discussion on the EPA's proposed compliance provisions for temporary control devices for use during intermittent liquids unloading events.

C. Process Controllers

1. Background

Under the March 2024 Final Rule, the NSPS OOOOb final standards and EG OOOOc final presumptive standards contain requirements for each process controller affected or designated facility. These rules define process controller affected and designated facilities as the collection of natural gas-driven process controllers at a well site, centralized production facility, onshore natural gas processing plant, or a compressor station. The definitions of affected and designated facilities exclude natural gas-driven process controllers that function exclusively as emergency shutdown devices as well as process controllers not driven by natural gas, so neither the NSPS nor the EG applies to these types of controllers. The NSPS standards and the EG presumptive standards require process controller affected or designated facilities to have zero methane and VOC emissions to the atmosphere, except for affected or designated process controllers located in Alaska at a site without electrical power. For process controller affected or designated facilities located at Alaska sites that do not have access to electrical power, an owner or operator may either route process controller emissions through a CVS to a control device that reduces emissions by 95.0 percent, or they may use intermittent vent or low-bleed

process controllers (*i.e.*, those that have a bleed rate less than or equal to 6 standard cubic feet per hour (scfh)) so long as they perform periodic monitoring of their intermittent controllers to ensure those controllers are not emitting to the atmosphere during idle periods.

To address concerns about new sources' ability to obtain the equipment necessary to demonstrate compliance with the final standard of zero emissions immediately upon the effective date of the final rule, the March 2024 Final Rule NSPS allowed up to 1 year from the effective date of the final rule (*i.e.*, May 7, 2025) to come into full compliance with the final NSPS standard of zero emissions. Until that date of compliance, owners and operators must demonstrate compliance with an interim standard which mirrored the requirements for sites in Alaska that do not have access to electrical power.¹²⁰ To address continuing concerns about the supply chain and the ability of new sources to obtain the necessary equipment to comply with the process controller requirements by May 7, 2025, the EPA issued an IFR and request for comment on July 31, 2025 to revise the compliance date for the zero emissions standards.¹²¹ The EPA then responded to comments on the IFR and issued a final rule.¹²² The NSPS compliance date for the zero emissions standard for process controllers is now January 22, 2027, and the interim standard continues to apply to process controller affected facilities (*i.e.*, the same standard applicable to sites in Alaska without access to electricity) until that date.¹²³

For EG OOOOc, which included presumptive standards for process controllers, the March 2024 Final Rule included a State plan submittal deadline of 24 months after publication of the final EG OOOOc (*i.e.*, March 9, 2026). To provide more time for States to develop their State plans, the July 2025 IFR extended the State plan submittal deadline to January 22, 2027. *See* section II.E of this preamble for additional details regarding the IFR.

Reconsideration petitioners raised several issues regarding the March 2024 Final Rule process controller requirements that they requested the EPA reconsider. One issue regards cost effectiveness of the presumptive standard for some applications, with

petitioners asserting that the zero emissions standard is not cost effective for existing process controllers used in high-pressure systems at transmission and storage compressor stations. Another issue regards the definition of modification for process controllers, for which petitioners assert that the EPA should clarify that a modification of affected or designated process controller facilities only occurs when there is both an increase in emissions and one or more process controllers is added to the affected or designated facility. Sections III.C.2.a and III.C.2.b of this preamble provide additional background, a summary of proposed changes, and the rationale for the proposed changes. Petitioners also raised issues regarding process controllers at marginal well sites and process controllers on temporary equipment. Finally, petitioners also raised concerns regarding reporting burdens centered around process controller monitoring and recordkeeping. Sections III.K.1.f and III.H.1.e of this preamble address these issues.

2. Additional Background and Summary of Proposed Changes and Rationale

a. Process Controllers on High-Pressure Systems at Transmission and Storage Compressor Stations

Background. Petitioners provided information regarding the cost of process controllers used in high-pressure systems at transmission compressor stations, which shows that the retrofit cost for existing facilities to come into compliance with the zero-emissions process controller standard for high-pressure systems is over 400 times higher than that analyzed by the EPA for the March 2024 Final Rule.¹²⁴ EPA estimated a single-pollutant cost effectiveness value of \$1,924/ton of methane for retrofitting an existing facility with compressed air in the Small Transmission and Storage Model Plant analysis in the March 2024 Final Rule.¹²⁵ For comparison, three companies estimated a cost effectiveness of \$860,714, \$2,887,686, and \$3,417,977 per ton of methane reduced, respectively, to replace valve actuators at existing high pressure transmission and storage stations they

¹²⁰ 89 FR 16929, 16930 (March 8, 2024).

¹²¹ 90 FR 35966 (July 31, 2025).

¹²² The December 2025 Final Rule responded to the comments and reaffirmed the conclusions and the regulatory amendments made in the July 2025 IFR. 90 FR 55671 (December 3, 2025).

¹²³ 90 FR 35973, 35974 (July 31, 2025).

¹²⁴ Interstate Natural Gas Association of America (INGAA). (2024a). Petition. Letter to Michael S. Regan from INGAA. Re: Petition for Reconsideration of Final Rule or, in the Alternative, for New Rulemaking in "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: for Reconsideration. (Non-Confidential Version). May 15, 2024.

¹²⁵ 89 FR 16820 (March 8, 2024).

were operating.¹²⁶ Petitioners explained that the amount of compressed air needed to actuate high-pressure process controllers, which the petitioners characterized as requiring a pressure of 100 pounds per square inch gauge (psig) or greater, requires more expensive process controller equipment and facility infrastructure than that included in the EPA's BSER analysis for the March 2024 Final Rule. Petitioners noted that the EPA's analysis focused on upstream processes, data, and equipment, and these elements are not the same for many process controller applications in the transmission and storage segment. Petitioners asserted that the replacement of the process controllers, and in particular, the valve actuators that would be required to meet the zero emissions standard for these high-pressure applications is much more expensive than that included in the EPA's analysis for the cost of replacing process controllers. Petitioners also stated that due to reliability and safety concerns, the conversion of these process controllers and their actuators would be to instrument air-powered devices rather than electrically-powered or self-contained devices. Petitioners noted that this is because pneumatic actuators are typically faster than electric alternatives, which is essential for quick process adjustments at the compressor.

Petitioners provided data from three companies estimating the cost effectiveness of replacing natural gas-powered process controllers and actuators with compressed air-powered process controllers and actuators at facilities that have electricity at the site. These values ranged from \$860,714 to \$3,417,977 per ton of methane emissions reduced, which are 440 and 1,750 times higher than the EPA's estimate for the March 2024 Final Rule of \$1,951 per ton of methane reduced from large transmission and storage facilities that have electricity at the site.¹²⁷ Based on these estimates, petitioners argue it is not cost effective to replace existing natural gas-powered process controllers and actuators in these high pressure applications with compressed air-powered process controllers and actuators.

Summary of Proposed Changes and Rationale. The EPA proposes to amend the standards for modified and reconstructed facilities under NSPS OOOOb and the presumptive standards in the EG OOOOc model rule for process controllers at compressor stations, as defined in 40 CFR 60.5430b and 40 CFR 60.5430c that require an actuation pressure greater than 100 psig. Like other process controllers, natural gas-driven process controllers at natural gas compressor stations that require an actuation pressure greater than 100 psig and that function exclusively as emergency shutdown devices are not included in the affected or designated facility. This is also true for controllers not driven by natural gas. Put another way, the revisions that the EPA is proposing here do not impact the regulatory exclusion for emergency shutdown devices and for controllers not driven by natural gas. The EPA proposes to create a new subcategory which includes new NSPS requirements (for modified and reconstructed sources), and new presumptive standards, for these high-pressure process controllers, which are based on the revised BSER analysis and on the conclusion that retrofitting to zero-emissions controllers is not technically feasible or cost effective. Under the proposed requirements, an owner or operator may either route process controller emissions through a CVS to a control device that reduces emissions by 95.0 percent, or they may use low-bleed natural gas-powered process controllers (*i.e.*, those that have a natural gas bleed rate less than or equal to 6 scfh) in combination with intermittent vent process controllers so long as the owner/operator periodically monitors the intermittent controllers to ensure they are not emitting to the atmosphere during idle periods.

The EPA considered the petitioners' concerns and the information provided regarding the costs and emission reductions associated with the process controller requirements at facilities with process controllers that are on high-pressure systems at transmission compressor stations. The EPA evaluated the data provided by the petitioners and contacted vendors regarding the costs of process controllers and actuators for high-pressure systems at these sites. The EPA agrees that the equipment costs are higher than those considered in the 2024 BSER analysis, as the Agency did not have sufficient information available at that time to anticipate the need for different process controller equipment for high-pressure systems at transmission compressor stations. The

EPA revised the analysis performed for the March 2024 Final Rule on cost effectiveness of zero-emitting process controllers for existing, modified and reconstructed sources to include the new information for process controllers on high pressure systems at transmission compressor stations.¹²⁸ The nature of these high pressure systems limits the technical feasibility of routing emissions from these controllers to a process, control, or sales line and also limits the use of self-contained process controllers. These facilities need to use fast-acting process controllers and actuators. Electric process controllers are not fast enough. Controllers driven by compressed air are fast enough; they are technically feasible, but their costs are very high. The EPA evaluated the costs and emissions reductions of replacing natural gas-powered process controllers with process controllers driven by compressed air. The EPA estimates that to replace natural gas-driven process controllers on high pressure systems with process controllers driven by compressed air at compressor stations, the capital costs would be \$2.4 million, annualized capital costs would be \$263,300, and emissions would be reduced by 0.2 tons per year (tpy) of VOC and 8.0 tpy of methane, resulting in a cost of \$10.9 million per ton of VOC emissions reduced and \$33,100 per ton of methane emissions reduced.¹²⁹ The EPA proposes to determine that these updated values are not cost effective. Based on this determination, along with the knowledge that only this subset of controllers faces these higher equipment and operating costs, the EPA proposes to determine that a different standard (and presumptive standard) for process controllers on high pressure systems would be warranted (a standard other than the zero emission standard) and evaluated other emissions control options. These options are explained below.

The EPA evaluated the use of alternative control options to zero-emitting process controllers in NSPS OOOOb and EG OOOOc. The only emissions control option identified as technologically feasible and cost effective was the requirement in the NSPS OOOOb and EG OOOOc for sites

¹²⁶ Interstate Natural Gas Association of America (INGAA). (2024a). Petition. Letter to Michael S. Regan from INGAA. Re: Petition for Reconsideration of Final Rule or, in the Alternative, for New Rulemaking in "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: for Reconsideration. (Non-Confidential Version). May 15, 2024.

¹²⁷ INGAA (2024a).

¹²⁸ Technical Memorandum to Docket ID EPA-HQ-OAR-2021-0317. *Revised Analysis for Process Controllers and Pumps for Reconsideration of New Source Performance Standards 40 CFR 60, Subpart OOOOb and Emissions Guidelines 40 CFR 60, Subpart OOOOc.* August 28, 2026.

¹²⁹ This and additional information regarding the revised analysis conducted for process controllers may be found in the TSD for this proposal, which is available in the docket for this action.

in Alaska that do not have access to electrical power. To evaluate the costs of this option for process controllers on high-pressure systems at transmission compressor stations, the EPA assumed that sites would choose to use low-bleed or intermittent. Consistent with the distribution of controller types documented in the March 2024 Final Rule, where the Agency determined that intermittent-vent controllers represent the predominant controller type in the field (as reflected in the one-to-three ratio of low bleed to intermittent vent used in the model plant analysis), it was assumed that all controllers were of the intermittent type, and that the process controllers would be monitored quarterly with OGI to ensure they are operating properly.¹³⁰ The EPA estimates that annual costs associated with this option would be \$300, and emissions would be reduced by 0.15 tpy of VOC and 5.4 tpy of methane, resulting in a cost of \$2,000 per ton of VOC emissions reduced and \$55 per ton of methane emissions reduced from a representative affected facility (*i.e.*, transmission compressor station). The EPA proposes to determine that these values are cost effective and proposes these requirements (and this presumptive standard) for process controllers on high pressure systems at compressor stations for modified and reconstructed facilities under NSPS OOOOb and for the presumptive standards in the EG OOOOc model rule. The EPA solicits comment on this proposal. (Question III.3a)

Based on the information provided by petitioners, it is the EPA's understanding that only the retrofit costs for existing sources to come into compliance with a zero emissions standard are prohibitive. It is the EPA's understanding that when new facilities are being planned and constructed, it is possible for zero emissions process controllers to be incorporated into the facility design at a cost that is similar to the cost of including natural gas-driven process controllers, such that it is cost effective to include zero-emissions process controllers on high pressure systems at natural gas compressor stations. However, if these facilities were built with process controllers that use natural gas and are then required to replace those process controllers with zero emitting equipment, essentially doubling the cost of this already expensive equipment, it could be cost prohibitive and therefore unreasonable considering the relatively small amount of emissions reduction that would be achieved.

Accordingly, the EPA is proposing a different standard only for existing sources that would be required to retrofit equipment to comply with the NSPS OOOOb standards (*i.e.*, modified and reconstructed facilities) and the EG OOOOc presumptive standards but is not proposing an alternative or different standard for newly constructed facilities (*i.e.*, for sources subject to NSPS OOOOb that were not previously existing sources that then modified or reconstructed). Based on the above understanding, the EPA does not believe that this proposed change would allow, or result in, new facilities that are planned and constructed with zero emissions process controllers to revert to natural-gas driven process controllers. As a function of permitting and cost, the Agency does not believe that new facilities designed with zero emissions process controllers would have the incentive or ability to make such a change by modifying or retrofitting, nor is that result intended by this proposed change. The EPA is soliciting comment on this aspect of the proposal, including whether additional or alternative standards or subcategories for sources subject to NSPS OOOOb are merited and whether the EPA's premise regarding cost equivalency in the design and initial planning phases is accurate. (Question III.3b)

The EPA is also soliciting comment on the actuation pressure which best categorizes these high-pressure systems and whether additional subcategories are merited. Industry representatives have suggested using 100 psig as a general guideline for the level of pressure at which different types of process controllers, and actuators in particular, become more costly than the equipment needed for lower pressure levels. However, the EPA is interested in any information that may suggest that another or additional pressure levels would be better suited to delineate the subcategory or further subcategories. (Question III.3c)

b. Modification Criteria for Process Controllers

Background. Petitioners requested that the EPA clarify that a modification for process controllers occurs only when there is both an increase in emissions and one or more controllers are added to the facility. Petitioners recounted that the EPA changed the definition of affected facility for process controllers from a single process controller to the collection of all the process controllers at a well site in NSPS OOOOb. Petitioners also recounted that in NSPS OOOOb, the EPA changed the modification criteria to state, “[f]or the

purposes of § 60.5390b, in addition to the definition in § 60.14, a modification occurs when the number of natural gas-driven process controllers in the affected facility is increased by one or more.” According to the petitioners, the regulatory language seems to indicate that process controllers would be considered modified only if there is an increase in emissions and the number of natural gas-driven process controllers is increased by one or more, but in the March 2024 Final Rule preamble, the EPA focused only on the number of increased controllers, implying that an increase in process controllers automatically increases emissions from the affected facility. According to the petitioners, there are many actions that can take place at the time a new controller is added to offset its emissions, such as when a new controller replaces an existing controller with the same or with higher emissions or when new controller emissions are offset by the removal of other controllers or adjustments in their operations. The petitioner reported that these concepts have long been a part of facility operations management to limit the need for additional permitting.

Summary of Comment Solicitation. The EPA acknowledges the petitioners' request for clarification and is soliciting comment on whether revisions to the current modification determination language in 40 CFR 60.5365b(d)(1) for process controllers are warranted. The EPA maintains that increasing the total number of natural gas-driven process controllers at a facility generally increases the emissions of natural gas, methane, and VOC to the atmosphere by the nature of the equipment, which bleeds gas continuously and/or emits gas during actuation events, emits gas during malfunctions of the equipment, or emits gas through leaks in the equipment or from connections to CVSSs. Adding one more natural gas-emitting process controller to an existing set of natural gas-emitting process controllers is therefore generally expected to result in increased emissions. The intent and purpose of this provision was to simplify modification determinations by eliminating the need for owners/operators to determine emissions before and after a change in a process controller affected facility and to reduce the burden on permitting authorities reviewing that modification determination. That said, the EPA also recognizes that by statute, an increase in emissions is a necessary condition to a modification determination. The EPA also notes that the number of process controllers in the affected facility does

¹³⁰ 89 FR 16924.

not increase when a new natural gas-driven process controller replaces an existing one, or when the addition of a process controller is offset by the removal of one or more existing process controllers. The petitioner suggests that, in some cases, operational adjustments to other controllers could offset the emissions of the new controller. The EPA is soliciting additional information on the relative change in emissions when these process controller replacement events occur and the frequency with which they occur. The EPA also requests comment on whether the existing modification determination language appropriately captures changes resulting in emissions increases, or whether adjustments to the current criteria are needed to reflect industry practices, such as clarifying what constitutes net increases in emissions from the source. (Question III.3d)

The EPA recognizes that other issues raised in reconsideration petitions¹³¹ on the March 2024 Final Rule related to process controllers affected and designated facilities are of interest to stakeholders. The EPA is still evaluating some of those other issues. One of those issues, for example, suggests that the EPA reevaluate the cost-effectiveness of process controllers, especially for existing source retrofits and consider alternative options for compliance. Petitioners specifically suggest that the EPA consider for both NSPS OOOOb and EG OOOOc that routing emissions from process controllers to a control device should be allowed as an option for compliance. Furthermore, petitioners suggest that the EPA consider further subcategorization for existing sites that do not have access to electricity or have a de minimis number of process controllers.

The EPA is soliciting comment from stakeholders and the public on these and other specific issues related to process controller affected and designated facilities. Specifically, the EPA solicits comment on whether it would be appropriate to consider broader flexibility for process controllers as the petitioners suggest. The EPA asks for additional information and data related to cost and technical feasibility of retrofits, routing to new or existing control devices, and challenges related to electricity access. The EPA also requests comment on recordkeeping, retention, and reporting requirements related to process controllers and whether it is appropriate

to repeal the zero emission standard for process controllers under NSPS OOOOb and EG OOOOc based on information suggesting that the Agency's prior cost and emission-reduction projections were erroneous as relevant to the BSER determinations and resulting standards for such requirements. (Question III.3e)

D. Pumps

1. Background

Under the March 2024 Final Rule, the NSPS OOOOb final standards and EG OOOOc final presumptive standards contain requirements for each pump affected or designated facility, which is the collection of natural gas-driven pumps at a well site, centralized production facility, onshore natural gas processing plant, or compressor station. Pumps that are in operation less than 90 days per calendar year or that are not natural gas-driven are not included in the definition of affected or designated facility. For pump affected or designated facilities located at a site that has access to electrical power and for those without access to electrical power that have three or more natural gas-driven diaphragm pumps, the pump affected facility must have zero methane and VOC emissions to the atmosphere. For each pump affected or designated facility located at a site that does not have access to electrical power and that also has fewer than three natural gas-driven diaphragm pumps, emissions must be controlled if a control device is otherwise onsite.

Section III.D.2 of this preamble provides additional background, summary of proposed changes, and rationale for proposed changes.

2. Additional Background and Summary of Proposed Changes and Rationale

Background. Petitioners asserted that the EPA failed to justify NSPS OOOOb standards and EG OOOOc presumptive standards of zero emissions for existing natural gas-driven pumps that are already in compliance with NSPS OOOOa, which requires certain natural gas-driven diaphragm pumps to be routed to a control device or process that achieves an emissions reduction of at least 95.0 percent.¹³² Petitioners requested that the EPA's model rule and presumptive standards in EG OOOOc and the standards in OOOOb (for modified and reconstructed facilities) allow these existing pumps that are already reducing emissions by 95 percent to continue to comply with NSPS OOOOa instead of having to convert to the zero emissions standard

(100 percent control as opposed to 95 percent control). Petitioners implied that the EPA did not adequately consider the incremental cost effectiveness of requiring existing diaphragm pumps subject to NSPS OOOOa (and already achieving 95 percent control) to achieve zero emissions.

Summary of Proposed Changes and Rationale. The EPA proposes to amend the standards for modified and reconstructed sources under NSPS OOOOb and the presumptive standards in the EG OOOOc model rule for pumps. The proposed amendments include an alternative emissions standard of 95.0 percent control for individual pumps within a pump designated (or affected) facility that were already routing emissions through a CVS to a control device achieving 95.0 percent or greater control of emissions on the effective date of the March 2024 Final Rule (*i.e.*, December 6, 2022). These pumps that are already reducing their emissions by at least 95 percent would not be required to achieve zero emissions (100 percent reduction of emissions), where zero-emitting pumps would be the otherwise applicable standard (*i.e.*, sites with access to electricity or sites without access to electricity that have three or more diaphragm pumps). The modified/reconstructed standards under NSPS OOOOb and the presumptive standards under EG OOOOc for any other pumps in the pump designated facility (meaning those whose emissions were not already reduced by 95.0 percent) would remain those finalized in the March 2024 Final Rule. This proposed alternative standard would apply to any pumps at an affected pump facility or designated facility that were already routing emissions through a CVS to a control device achieving 95.0 percent or greater control of emissions on the effective date of the March 2024 Final Rule, regardless of whether or not those pumps were previously required by NSPS OOOOa to achieve 95.0 percent emissions reductions.

The EPA considered the petitioner's concerns and evaluated the incremental cost effectiveness of moving from 95.0 percent emissions control to zero emissions (*i.e.*, 100 percent emissions control). For sites that have access to power from the electrical grid, the options for achieving zero emissions that were included in this analysis were the use of a compressed air system to power existing pneumatic pumps and the replacement of existing natural gas-powered pneumatic pumps with electrical pumps. For sites that do not have access to power from the electrical

¹³¹ API (2025). Re: Request for Administrative Reconsideration of EPA's Final Rule "New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities"—NSPS OOOObc. September 12, 2025.

¹³² API-AXPC (2024b).

grid, the analysis included the option to replace existing natural gas-powered pneumatic pumps with electrical pumps powered by on-site solar panels. These options were the most cost effective means of achieving zero emissions that were analyzed for the March 2024 Final Rule. In the analysis, the EPA evaluated the difference in costs and the difference in emissions between the 95.0 percent emissions control scenario and the 100 percent emissions control scenario. As the systems required for

95.0 percent emissions control already exist and operate, and there is no overlap in equipment used between these systems and the systems that would be used for the zero emissions options analyzed, the EPA assumed that the difference in costs equate to the full costs of the zero emissions system. The difference in emissions would be 5 percent of the total emissions (*i.e.*, the difference between 95.0 percent and 100 percent control). A summary of the results of this analysis is shown in table

3. The cost effectiveness values shown in table 3 are based on the estimated total annual costs of each zero-emissions pump option and the emissions reductions associated with going from 95.0 percent to 100 percent emissions control. Further information regarding the analysis conducted for pumps may be found in a technical memorandum, available in the docket for this proposed rule.¹³³

BILLING CODE 6560-50-P

¹³³ Technical Memorandum to Docket ID EPA–HQ–OAR–2021–0317. *Revised Analysis for Process Controllers and Pumps for Reconsideration of New Source Performance Standards 40 CFR 60, Subpart OOOOb and Emissions Guidelines 40 CFR 60, Subpart OOOOc*. August 28, 2026.

Table 3. Summary of Cost effectiveness Analysis of Pump Incremental Emissions**Reductions**

Location type and number of pumps at site	Incremental Cost effectiveness (\$/tpy)	
	VOC	Methane
Electric pumps (grid powered) - production segment:		
One diaphragm	\$33,049	\$9,188
Two diaphragm	\$33,049	\$9,188
Three diaphragm	\$33,049	\$9,188
Four diaphragm	\$33,049	\$9,188
Electric pumps (grid powered) - transmission and storage segment:		
One diaphragm	\$253,902	\$7,033
Two diaphragm	\$253,902	\$7,033
Three diaphragm	\$253,902	\$7,033
Four diaphragm	\$253,902	\$7,033
Electric pumps (solar powered) - production segment:		
One diaphragm	\$37,388	\$10,394
Two diaphragm	\$37,388	\$10,394
Three diaphragm	\$37,388	\$10,394
Four diaphragm	\$37,388	\$10,394
Electric pumps (solar powered) - transmission and storage segment:		
One diaphragm	\$287,234	\$7,956
Two diaphragm	\$287,234	\$7,956
Three diaphragm	\$287,234	\$7,956
Four diaphragm	\$287,234	\$7,956
Compressed air-driven pumps - production segment:		
One diaphragm	\$327,556	\$91,061
Two diaphragm	\$163,778	\$45,530
Three diaphragm	\$109,185	\$30,354
Four diaphragm	\$81,889	\$22,765
Compressed air-driven pumps - transmission and storage segment:		
One diaphragm	\$2,516,449	\$69,699
Two diaphragm	\$1,258,224	\$34,850
Three diaphragm	\$838,816	\$23,233
Four diaphragm	\$629,112	\$17,425

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As seen in table 3, the estimated incremental cost effectiveness to achieve 100 percent emissions control for both VOC and methane are above the values considered to be reasonable by the EPA. Specifically, the lowest cost effectiveness values of all these options

for emissions reductions are estimated to be \$7,033 per ton of methane reduced and \$33,049 per ton of VOC reduced. Both of these values are above what the EPA has historically considered to be cost reasonable when determining the BSER for VOCs and methane under

CAA section 111.¹³⁴ As there is no cost

¹³⁴ Cost reasonableness for BSER purposes under CAA section 111 is generally discussed in the March 2024 Final Rule, 89 FR 16864, although the values expressed in that rule would now be higher based on 2024 dollars. By way of example, the EPA determined in that 2024 rulemaking that cost

Continued

effective control option that can achieve the incremental emissions reductions from 95.0 percent to 100 percent reduction, the EPA proposes to determine that the NSPS standard for modified and reconstructed sources and the EG presumptive standard should allow owners and operators of sources with pumps already controlled by 95.0 percent to continue to use and maintain those controls rather than undertake costly capital improvement projects to switch to emissions controls that result in only 5 more percentage points emissions reductions than achieved with the use of the controlled pumps. Therefore, the EPA proposes to include an alternative standard for modified and reconstructed facilities under NSPS OOOOb and the presumptive standards in EG OOOOc to take into account the updated BSER analysis that properly considers the incremental costs of converting to zero emissions for individual pumps within a designed pump facility that are routed through a CVS to a control device achieving 95.0 percent or greater control of emissions. This alternative standard would require these pumps to achieve 95.0 percent or greater control of emissions as well as meet the compliance requirements for CVSs and control devices in NSPS OOOOb and EG OOOOc.

While the petitioner specifically requested this emissions control level for pumps that were required to reduce emissions by 95.0 percent under NSPS OOOOa, the EPA is proposing to determine that this alternative standard should also be available to other pumps that had emissions controlled by 95.0 percent on or before December 6, 2022. There is no difference in the incremental cost effectiveness of going from 95.0 percent to 100 percent emissions control between those pumps achieving 95.0 percent control due to NSPS OOOOa requirements and those that were achieving 95.0 percent emissions control for other reasons, such as State or local requirements. Therefore, the EPA proposes to include this alternative standard for all such existing pumps in NSPS OOOOb (for modified or reconstructed sources) and EG OOOOc.

E. Fugitive Emissions

1. Background

Under the March 2024 Final Rule, NSPS OOOOb includes standards for

effectiveness values of up to \$5,540/ton of VOC reduction were reasonable at that time. By way of another example, EPA noted in the November 2021 Proposal that the EPA previously determined that methane cost effectiveness values in the 2016 NSPS OOOOa of \$2,185/ton of methane reduction represented reasonable costs.

fugitive emissions components affected facilities and EG OOOOc includes presumptive standards for fugitive emissions components designated facilities. As described in the preamble to the March 2024 Final Rule, each fugitive emissions components affected facility and each fugitive emissions components designated facility includes the collection of fugitive emissions components at a well site, centralized production facility, or a compressor station.¹³⁵ As defined at 40 CFR 60.5430b and 60.5430c, fugitive emissions include an indication of emissions observed from a fugitive emissions component using audible, visual, and olfactory (AVO), an indication of visible emissions observed from a fugitive emissions component using an OGI instrument, or an instrument reading of 500 parts per million by volume (ppmv) or greater from a fugitive emissions component using EPA Method 21 of appendix A–7 to 40 CFR part 60 (EPA Method 21). 40 CFR 60.5430b defines a fugitive emissions component as any component that has the potential to emit fugitive emissions of methane or VOCs at a well site, centralized production facility, or compressor station. These devices include valves (including separator dump valves), connectors, pressure relief devices, open-ended lines, flanges, covers and CVSs not subject to 40 CFR 60.5411b, thief hatches or other openings on a storage vessel not subject to 40 CFR 60.5395b, compressors, instruments, meters, and yard piping. Similarly, the EG OOOOc, 40 CFR 60.5430c contains comparable definitions for fugitive emission components, defined as any component that has the potential to emit fugitive emissions of methane at a well site, centralized production facility, or compressor station. This includes but is not limited to valves (including separator dump valves), connectors, pressure relief devices, open-ended lines, flanges, covers and CVSs not subject to 40 CFR 60.5411c, thief hatches or other openings on a storage vessel not subject to 40 CFR 60.5396c, compressors, instruments, meters, and yard piping.

For the NSPS OOOOb, owners and operators of affected facilities that contain fugitive emission components follow 40 CFR 60.5397b. Owners and operators of fugitive emission components at affected facilities must develop and follow the fugitive emissions monitoring plan for the site consistent with 40 CFR 60.5397b(b), conduct initial and ongoing fugitive

emission monitoring surveys as provided in 40 CFR 60.5397b(f)–(g), repair any source of fugitive emissions that have been identified as provided in 40 CFR 60.5397b(h), and follow the proper recordkeeping and reporting procedures as specified in 40 CFR 60.5397b(k). In general terms, after the initial survey, this provision requires monitoring and repair for the five subcategories of well sites and compressor stations as follows:

- Single wellhead only well sites: Quarterly monitoring using AVO or any other detection method (e.g., EPA Method 21, etc.).
- Multi-wellhead only well sites: Semiannual OGI (or EPA Method 21) monitoring and quarterly monitoring using AVO or any other method.
- Well sites or centralized production facilities with specified major production and processing equipment: Quarterly OGI (or EPA Method 21) monitoring and bimonthly monitoring using AVO or any other detection method.
- Small well sites: Quarterly monitoring using AVO or any other detection method.
- Compressor stations: Quarterly OGI (or EPA Method 21) and monthly monitoring using AVO or any other detection method.

The third subcategory includes well sites and centralized production facilities that have: (1) One or more controlled storage vessels or tank batteries; (2) one or more control devices; (3) one or more natural gas-driven process controllers or pumps; or (4) two or more pieces of major production or processing equipment not listed in items (1)–(3).¹³⁶

Major production and processing equipment as defined in 40 CFR 60.5430b means reciprocating or centrifugal compressors, glycol dehydrators, heater/treaters, separators, control devices, natural gas-driven process controllers, natural gas-driven pumps, and storage vessels or tank batteries collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water, for the purpose of determining whether a well site is a wellhead only well site.

For the fourth category of small well sites, 40 CFR 60.5430b defines a small well site, for purposes of the fugitive emissions standards in 40 CFR 60.5397b and 40 CFR 60.5398b, as a site that contains a single wellhead, no more than one piece of certain major production and processing equipment, and associated meters and yard piping. Small well sites cannot include any

¹³⁵ 89 FR 16671 (March 8, 2024).

¹³⁶ 40 CFR 60.5397b(g)(1)(iv)(A)–(D).

controlled storage vessels (or controlled tank batteries), control devices, natural gas-driven process controllers, or natural gas-driven pumps. The presumptive standards for EG OOOOc contain similar provisions for fugitive emissions components designated facilities under 40 CFR 60.5397c.

The March 2024 Final Rule requirements at 40 CFR 60.5397b(c)(2) and 40 CFR 60.5397c(c)(2) do not specifically state that a combination of fugitive emissions monitoring techniques can be used to comply with the requirements, and reconsideration petitioners on the March 2024 Final Rule interpret the term “technique” (singular) used in 40 CFR 60.5397b(c)(2) and 40 CFR 60.5397c(c)(2) to mean that only one technique can be utilized in order to comply with the requirements.¹³⁷ Reconsideration petitioners expressed concerns with the clarity of the current rule on this point. See section III.E.2.a of this preamble for detailed descriptions of these concerns.

The March 2024 Final Rule also includes provisions for difficult-to-monitor and unsafe-to-monitor fugitive emissions components surveyed using EPA Method 21.¹³⁸ See 40 CFR 60.5397b(g)(2) and (3). No similar provisions exist for difficult- and unsafe-to-monitor fugitive emissions components monitored by other methods, such as AVO inspections. Reconsideration petitioners requested that the EPA clarify and add, as needed, provisions for AVO inspections like those provided for EPA Method 21. See section III.E.2.a of this preamble for discussion on EPA Method 21 specific provisions for AVO inspections.

The March 2024 Final Rule provides criteria at 40 CFR 60.5365b(i)(2) to determine, for the purposes of the fugitive emissions components, if a modification of a centralized production facility has occurred. The EPA received requests to revise the current modification criteria related to centralized production, with petitioners arguing that the criteria are inappropriate as these facilities often receive production from offsite wells operated by different entities, and the operator of the centralized production facility may be unaware of offsite activities that could trigger a modification. See section III.E.2.c of this preamble for discussion on modification criteria for centralized production facilities.

Under the March 2024 Final Rule, the fugitive emissions monitoring requirements apply until the site

completes the well closure requirements. These requirements include submission of a well closure plan that includes permanent plugging of all the wells at the site and submitting a well closure report.¹³⁹ Owners and operators need to submit the well closure plan within 30 days of the cessation of production from all wells located at the site.¹⁴⁰ The well closure plan must include a description of the steps necessary to close all the wells at the site, including permanently plugging those wells; a description of the financial requirements and disclosure of financial assurance to complete closure; and details on the schedule for completing all activities in the well closure plan.¹⁴¹ Owners and operators are also required to submit a notification of intent to close the well site 60 days prior to starting well closure activities. 40 CFR 60.5397b(l)(2). A final OGI survey is required of the well site after completing the activities in the well closure plan, with requirements to take steps to eliminate emissions and resurvey the source if any emissions are imaged by the OGI instrument, and there are associated recordkeeping and reporting requirements. 40 CFR 60.5397b(l)(3)–(4). Reconsideration petitioners requested that the EPA revise the requirement to notify the Agency prior to well closure. See section III.E.2.d of this preamble for discussion on the well closure requirements.

2. Additional Background and Summary of Proposed Changes and Rationale

Reconsideration petitioners requested that the EPA reconsider certain issues related to the March 2024 Final Rule fugitive emissions monitoring requirements.¹⁴² This section describes those requests raised in petitions for reconsideration that are relevant to this proposal.

Petitioners requested that the EPA allow operators to develop flexible, fit-for-purpose monitoring plans that use multiple detection technologies during each periodic survey. Petitioners also requested that the EPA add provisions for AVO surveys of difficult-to-monitor and unsafe-to-monitor fugitive emissions components. See section III.E.2.a of this preamble for further discussion on both of these issues.

In addition, petitioners asserted that the definition of a fugitive emissions component should reference certain provisions from NSPS OOOO and NSPS

OOOOa in addition to the provisions already referenced from NSPS OOOOb. See section III.E.2.b of this preamble for further discussion of this issue, including petitioners’ specific recommendations.

Furthermore, petitioners claimed that the modification criteria for fugitive emissions components affected facilities finalized in the March 2024 Final Rule are inappropriate for certain centralized production facilities in the gathering and boosting segment.¹⁴³ See section III.E.2.c of this preamble for further discussion of this issue.

Additionally, petitioners asserted that the timing components of the well closure notification requirements in the March 2024 Final Rule could impact an operators’ ability to timely close the well. See section III.E.2.d of this preamble for further discussion of this issue.

a. Fugitive Emissions Monitoring Detection Technologies

Background. Petitioners requested that the EPA clarify that operators may use AVO, OGI, and/or EPA Method 21 as part of flexible, fit-for-purpose fugitive emissions monitoring plans. According to petitioners, the March 2024 Final Rule fails to clarify whether facilities can use multiple monitoring technologies or whether they need to use a single technology or method to demonstrate compliance. Petitioners also requested extensions of difficult-to-monitor and unsafe-to-monitor provisions for fugitive emissions monitoring surveys conducted using EPA Method 21 to fugitive emissions monitoring surveys performed using AVO.

Summary of Proposed Changes and Rationale. The EPA proposes to revise 40 CFR 60.5397b(c)(2) and 40 CFR 60.5397c(c)(2) of the regulatory text in NSPS OOOOb and EG OOOOc to refer to “technique(s)” (rather than “technique,” in the singular) to clarify that owners and operators have the option to use multiple survey techniques to comply with requirements based on the appropriate component monitoring survey method used. The Agency notes that 40 CFR 60.5397b(c)(2) and 40 CFR 60.5397c(c)(2) already include the phrase “and/or,” suggesting multiple techniques could be used. The EPA notes that several individual techniques can be used to determine fugitive emissions on their own, so using multiple techniques together can also meet the requirements of these provisions, as long as that use is otherwise consistent with the relevant

¹³⁹ 40 CFR 60.5397b(g), 40 CFR 60.5397b(l).

¹⁴⁰ 40 CFR 60.5397b(l)(1).

¹⁴¹ 40 CFR 60.5397b(l)(1).

¹⁴² API–AXPC (2024b)..

¹⁴³ API–AXPC (2024b).. pgs. 22–23.

¹³⁷ 89 FR 16871–16872 (March 8, 2024).

¹³⁸ 40 CFR 60.5397b(g)(2) and (3).

regulatory requirements. As such, this proposed revision clarifies the EPA's original intent to allow usage of multiple monitoring methods rather than restrict owners and operators to a single method.

The NSPS OOOOb and EG OOOOc currently include difficult-to-monitor and unsafe-to-monitor provisions in 40 CFR 60.5397b(g)(2) and (3), and in 40 CFR 60.5397c(g)(2) and (3), when facilities use EPA Method 21 to conduct fugitive emissions monitoring surveys. Considering the petitioners' request in this regard, the EPA acknowledges their concern that conducting AVO inspections shares similar monitoring challenges to conducting monitoring using EPA Method 21 in terms of potential difficulties or safety concerns when completing the inspection. As with EPA Method 21 inspections, the operator must visually see components to conduct an AVO inspection, and this may require the use of a lift or may require access to potentially unsafe locations. While the EPA expects fewer components would meet the definition of difficult-to-monitor and unsafe-to-monitor during an AVO inspection given that AVO does not have the same direct proximity requirements as EPA Method 21, the EPA recognizes the petitioners' concern that AVO inspections could pose similar difficulty and safety issues as those encountered when monitoring is conducted with EPA Method 21. Thus, the EPA proposes to amend 40 CFR 60.5397b(g)(2) and (3) and 40 CFR 60.5397c(g)(2) and (3) to include difficult- and unsafe-to-monitor provisions for AVO inspections that parallel those in the current rules for monitoring with EPA Method 21. The EPA solicits comment on this proposal. (Question III.4a)

In addition, for purposes of setting fugitive emissions monitoring requirements, the EPA seeks comment (including data and detailed information) on how often fugitive emissions are found at different types of sites, the approximate volume of gas emitted during a typical fugitive emissions event at each type of site, estimates regarding the approximate length of time that fugitive events last at these sites, and the cost of conducting fugitive emissions monitoring (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs). (Question III.4b)

The EPA is also soliciting comment on the cost effectiveness and cost reasonableness of monitoring requirements for fugitive emissions

generally. The EPA is specifically requesting information on the appropriate frequency, type of monitoring technology, equivalent monitoring technologies for various equipment types, and other relevant information that may improve EPA's cost effectiveness and cost reasonableness analyses, allowing the EPA to better target of emission reductions and EPA also seeks comment whether the fugitive emissions monitoring requirements in the March 2024 Final Rule are necessary considering this information. The EPA also seeks comment on whether further distinctions or subcategorizations may be needed to appropriately target meaningful emissions reductions in a cost reasonable manner, including potential exemptions of certain subcategories. (Question III.4c)

b. Definition of Fugitive Emissions Component

Background. Reconsideration petitioners requested that the EPA revise the definition of fugitive emissions component in the NSPS OOOOb to include references to the relevant provisions of NSPS OOOO and NSPS OOOOa as it does for NSPS OOOOb, such that this definition would exclude covers and CVSSs and thief hatches and other openings on a storage vessel, regulated under NSPS OOOO, NSPS OOOOa, or NSPS OOOOb, not just NSPS OOOOb. By way of a practical example, if the definition of fugitive emissions component excludes a thief hatch on an NSPS OOOOb applicable tank, fugitive surveys would not be required to include the thief hatch in the fugitive emissions survey conducted under 40 CFR 60.5397b. In this example, the EPA notes that this suggested change would not leave the thief hatch unregulated (i.e., owners and operators would not be excluded from having to close an improperly opened thief hatch). In this case, the closed vent system and cover requirements of 40 CFR 60.5416b would require inspections (and closing) of the thief hatch, which take place on the same schedule as inspections conducted for fugitives monitoring.

Summary of Proposed Changes and Rationale. The EPA proposes to revise the definition of fugitive emissions component in NSPS OOOOb to include certain references to requirements under the NSPS OOOO and NSPS OOOOa, such that the fugitive emissions component definitions in NSPS OOOOb better align with the fugitive emissions component definition in NSPS OOOO and NSPS OOOOa. In particular, the proposed revisions would exclude thief

hatches and other openings on a storage vessel, and covers and CVSS components regulated under NSPS OOOO, NSPS OOOOa, or NSPS OOOOb from the definition of fugitive emissions component in NSPS OOOOb, not just those regulated under NSPS OOOOb.

The definition of a fugitive emissions component in 40 CFR 60.5430b currently reads:

Fugitive emissions component means any component that has the potential to emit fugitive emissions of methane or VOC at a well site, centralized production facility, or compressor station, such as valves (including separator dump valves), connectors, pressure relief devices, open-ended lines, flanges, covers and CVSSs not subject to [section] 60.5411b, thief hatches or other openings on a storage vessel not subject to [section] 60.5395b, compressors, instruments, meters, and yard piping.

The EPA proposes to revise the definition of a fugitive emissions component in 40 CFR 60.5430b to include exclusions from the definition for emission sources subject to other requirements under the rules, such that it would read as follows:

Fugitive emissions component means any component that has the potential to emit fugitive emissions of methane or VOC at a well site, centralized production facility, or compressor station, such as valves (including separator dump valves), connectors, pressure relief devices, open-ended lines, flanges, covers and CVSSs not subject to [sections] 60.5411, 60.5411a, or 60.5411b, thief hatches or other openings on a storage vessel not subject to [sections] 60.5395, 60.5395a, or 60.5395b, compressors, instruments, meters, and yard piping.

The CVS subject to 40 CFR 60.5411, 60.5411a, or 60.5411b and thief hatches or other openings on a storage vessel subject to 40 CFR 60.5395, 60.5395a, or 60.5395b include specific monitoring requirements such that these sources would be reasonably excluded from the definition of fugitive emissions component. In NSPS OOOOa, CVS subject to 40 CFR 60.5411 or 60.5411a, and thief hatches or other openings on a storage vessel subject to 40 CFR 60.5395 or 60.5395a are excluded from the definition of fugitive emissions component. Specifically, the EPA is proposing to include in NSPS OOOOb parallel exclusions from the definition of fugitive emissions component to maintain consistency across the NSPS OOOO family of rules. These proposed changes would align with the fugitive emissions component definition for emission sources regulated under different provisions in the NSPS OOOO family of rules and reflect the EPA's longstanding position that "devices that vent as part of normal operations are not fugitive emissions components, insofar

as the natural gas discharged from the device's vent is not considered a fugitive emission.”¹⁴⁴

The EPA also considered whether to include a parallel change to EG OOOO in this proposal. To clarify, the EPA is not proposing to include references to NSPS OOOO, NSPS OOOOa or NSPS OOOOb in 40 CFR 60.5430c because the Agency expects sources subject to NSPS OOOO and NSPS OOOOa would be existing sources subject to EG OOOOc so that the exclusion for CVS and storage vessels subject to EG OOOOc is sufficient. The EPA also notes that for facilities with sources subject to NSPS OOOOb, the fugitive emission standards in NSPS OOOOb would apply rather than EG OOOOc, so an exclusion for CVS and storage vessels subject to NSPS OOOOb is not needed. Accordingly, this proposal does not include revisions to add references to NSPS OOOO, NSPS OOOOa or NSPS OOOOb in 40 CFR 60.5430c.

The EPA solicits comment on this proposal. (Question III.4d)

c. Modification Criteria for Centralized Production Facilities

Background. Reconsideration petitioners claimed that certain modification criteria (40 CFR 60.5365b(i)(2)) finalized in the March 2024 Final Rule for fugitive emissions components affected facilities are inappropriate for certain centralized production facilities that receive production from offsite wells because the centralized production facility operator may not know when an action is occurring at an offsite well that would trigger a modification at the centralized production facility.¹⁴⁵

Petitioners asserted that, under the definition the EPA finalized for a centralized production facility in the March 2024 Final Rule, the operator of the centralized production facility may not be the same entity as the operator of the offsite wells that flow to that centralized production facility.¹⁴⁶ For this reason, the petitioners asserted that

the centralized production facility operator may be unaware of an action occurring at an offsite well that could trigger a modification at the centralized production facility, thus making the requirements finalized in 40 CFR 60.5365b(i)(2) untenable. Related to ownership of the wells versus ownership of the centralized production facility, the petitioners referenced the Response to Public Comments on the November 2021 Proposal and the December 2022 Supplemental Proposed Rule where the EPA stated:

Regarding the comments that a centralized production facility may be owned by a different company than the well sites, this is not EPA's understanding of these sites. As discussed in the November 2021 Proposal, the centralized production facility definition was created, in part, to address the scope of fugitive emissions standards at well sites. The EPA described that these facilities are a type of well site; therefore, it is not the EPA's understanding for them to have a different owner. If the liquids have undergone custody transfer, then the operations described are no longer in the producing operations and would be a natural gas processing plant or a compressor station, depending on the scope of operations present at the site. The commenter did not provide rationale why this understanding is not correct.¹⁴⁷

Petitioners claimed that, in the above response, the EPA correctly acknowledged that some centralized production facilities (as defined in NSPS OOOOb and EG OOOOc) may have also met the definition of well site under NSPS OOOOa. However, the petitioners stated that the EPA failed to acknowledge that the crude oil and natural gas source category is defined in 40 CFR 60.5430, 60.5430a and 60.5430b as:

(1) Crude oil production, which includes the well and extends to the point of custody transfer to the crude oil transmission pipeline or any other forms of transportation; and

(2) Natural gas production, processing, transmission, and storage, which include the well and extend to, but do not include, the local distribution company custody transfer station.

Petitioners indicated that this definition of crude oil production includes operators in both the production segment and the gathering and boosting segment because both segments are upstream of a crude oil transmission pipeline or other forms of

transportation. Petitioners stated that gathering and boosting operators may operate a centralized production facility and not operate the wells flowing to the centralized production facility. Petitioners also claimed that while transfer of ownership of the produced oil (or other hydrocarbon liquids) occurs, this transfer is different from the point of custody transfer to the crude oil transmission pipeline, or any other forms of transportation stated in the definition of the source category or as defined 40 CFR 60.5430b.¹⁴⁸

Petitioners also stated that centralized production facilities are designed to collect and gather a maximum throughput capacity, meaning they are built to gather liquids from one or more well sites (similar to how a compressor station is built to gather natural gas from one or more well sites) and designed to continually operate at this capacity.

Summary of Proposed Changes and Rationale. The EPA acknowledges the petitioners' concerns regarding the March 2024 Final Rule modification criteria for centralized production facilities as related to fugitive emissions requirements. The Agency considered whether it is appropriate to propose changes based on the concerns raised relating to the modification criteria in 40 CFR 60.5365b(i)(2) and the receipt of liquids from offsite wells and has decided to propose the following amendments: First, the EPA proposes to amend the definitions of “well site” and “centralized production facility” to clarify the difference between a well site and a centralized production facility with respect to the receipt of liquids from one or more offsite natural gas or oil production wells. The EPA proposes to amend the definition for centralized production facility to clarify that centralized production facilities may include one or more onsite wells. The EPA also proposes to amend the definition for well site to further clarify that a surface site that also receives liquids from one or more offsite natural gas or oil production wells is a centralized production facility, not a well site. Second, the EPA also proposes to amend the modification criteria in 40 CFR 60.5365b(i)(2) to describe the activities that would be classified as a modification at a centralized production facility for purposes of 40 CFR 60.5397b and 60.5398b. In addition to the currently codified instances where a new well is drilled at the existing

¹⁴⁴ 89 FR 17043 (March 8, 2024).

¹⁴⁵ API-AXPC (2024b), pgs.22–24.

¹⁴⁶ See 40 CFR 60.5430b. “Centralized production facility means one or more storage vessels and all equipment at a single surface site used to gather, for the purpose of sale or processing to sell, crude oil, condensate, produced water, or intermediate hydrocarbon liquid from one or more offsite natural gas or oil production wells. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline. Process vessels and process tanks are not considered storage vessels or storage tanks. A centralized production facility is located upstream of the natural gas processing plant or the crude oil pipeline breakout station and is a part of producing operations.”

¹⁴⁷ U.S. EPA. (2023b). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule (86 FR 63110, November 15, 2021; 87 FR 74702, December 6, 2022). See Response II–4–2.

¹⁴⁸ Custody transfer means the transfer of crude oil or natural gas after processing and/or treatment in the producing operations, or from storage vessels or automatic transfer facilities or other such equipment, including product loading racks, to pipelines or any other forms of transportation.

centralized production facility or a well at an existing centralized production facility is hydraulically fractured or refractured, the EPA proposes that the following activities also would be classified as a modification: (a) the existing centralized production facility receives additional fluids from an offsite well which cumulatively exceed the throughput prior to the receipt of additional fluids. Throughput prior to the receipt of additional fluids is throughput established in a legally and practicably enforceable (LPE) limit in an operating permit or other requirement established under a Federal, state, local, or Tribal authority; or projected maximum average daily throughput, which is determined using a generally acceptable engineering model (*e.g.*, volumetric condensate rates from the tank battery based on the maximum gas throughput capacity of each producing facility); (b) the existing centralized production facility replaces or modifies one or more storage vessels such that the cumulative storage capacity of the existing centralized production facility increases; or c) one or more pieces of major production or processing equipment are added to the centralized production facility. In proposing changes to 40 CFR 60.5365b(i)(2), the EPA also proposes to delete the current modification criteria at 40 CFR 60.5365b(i)(2)(ii) and (iii) which state that a modification to centralized production facility occurs, in relevant part, if a well sending production to an existing centralized production facility is modified or a well site subject to 40 CFR 60.5397b or 60.5398b removes all major production and processing equipment, such that it becomes a wellhead only well site and sends production to an existing centralized production facility. The rationale for these changes is discussed below. The Agency notes that these revisions do not impact the modification criteria that apply to a well site under 40 CFR 60.5365b(i)(1). Wells that are located offsite, *i.e.*, wells that are not at the same surface site as the centralized production facility, are subject to those modification criteria, and if any of the activities specified in 40 CFR 60.5365b(i)(1)(i) through (iii) occur at those well sites, a modification to the well site would occur.

In the October 2018 Proposal to amend NSPS OOOOa, the EPA explained that emissions increases (for determining when a modification at a well site for the purposes of fugitive emissions occurs) result from two actions: the addition of processing equipment (and attendant fugitive

emissions components) and increases in production rates.¹⁴⁹ The EPA explained that increased production will “generate additional emissions at the well sites. Some of these additional emissions will pass through leaking fugitive emission components at the well sites (in addition to the emissions already leaking from those components).”¹⁵⁰ The EPA also explained that additional fugitive emissions can also result from installation of additional equipment.¹⁵¹ The EPA has not altered this understanding in subsequent rulemakings and continues to conclude that these two activities lead to emissions increases. In implementing these criteria for centralized production facilities in NSPS OOOOb and establishing the current modification criteria at 40 CFR 60.5365(i)(2), the EPA finalized criteria reflecting the same principle: that the addition of processing equipment (and attendant fugitive emissions components) and/or increases in production occur when a new well is drilled at an existing centralized production facility, a well at an existing centralized production facility is hydraulically fractured or refractured, or a well sending production to an existing centralized production facility is modified by one of these actions (*i.e.*, adding a well or hydraulically fracturing or refracturing a well), or when a well site removes all major production and processing equipment and sends production to an existing centralized production facility. As part of today’s action, the EPA is considering whether to revise the criteria for these modifications in NSPS OOOOb so that they reflect activities under the control of the operator of the centralized production facility, but still capture emissions increases resulting from the addition of processing equipment (and attendant fugitive emissions components) and/or increases in production.

First, the EPA reviewed our prior response to comment cited by the petitioners above, given information provided by the petitioners that the operator of a centralized production facility may not be the same entity as the well operator, which could result in the centralized production facility operator being unaware of activities occurring at an offsite well.¹⁵² As

discussed in the November 2021 Proposed Rule, the EPA structured the definition of centralized production facility to address, in relevant part, the scope of fugitive emissions standards for these types of facilities.¹⁵³ The EPA stated that “[o]ur intent is to limit the oil and gas production segment up to the point of custody transfer to an oil and natural gas mainline pipeline (including transmission pipelines) or a natural gas processing plant. Therefore, the collection of fugitive emissions components within this boundary are a part of the well site.”¹⁵⁴ While proposing a separate definition for “centralized production facility” in the November 2021 Proposed Rule for the purposes of NSPS OOOOb, the EPA stated that “[t]he EPA continues to define these facilities as a type of well site.”¹⁵⁵ In the final definition of “centralized production facility” at 40 CFR 60.5430b, the EPA did not include “custody transfer” as a criterion to determine the boundary of the centralized production facility. Instead, the EPA stated by definition at 40 CFR 60.5430b and 60.5430c that centralized production facilities “are part of the producing operations.” The EPA continues to maintain that view of centralized production facilities and is not proposing to change it in this action. In reviewing the prior RTC, where the EPA concluded that the centralized production facility and the wells sites producing to the centralized production facility had the same owner, and considering this updated analysis of the record, the EPA clarifies in this proposal that storage vessels and equipment at a single surface site which conduct the types of operations described in the definition of centralized production facility are a centralized production facility, regardless of ownership relative to the well sites producing hydrocarbons to the facility, provided they are located upstream of the natural gas processing plant or crude oil pipeline breakout station. For purposes of the fugitive emissions standards, these facilities remain part of the producing operations and are subject to the same fugitive emissions standards as well sites (rather than those applicable to compressor station facilities). This

Proposed Rule (86 FR 63110, November 15, 2021; 87 FR 74702, December 6, 2022). See Response II–4–2.

¹⁵³ 86 FR 63183 (November 15, 2021).

¹⁵⁴ 86 FR 63183 (November 15, 2021). Citing from the RTC to NSPS OOOOa. See U.S. EPA. (2016). EPA’s Responses to Public Comments on the EPA’s Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. May 2016. (page 4–194).

¹⁵⁵ 86 FR 63183 (November 15, 2021).

¹⁴⁹ 83 FR 52073 (October 15, 2018).

¹⁵⁰ 81 FR 35881 (June 3, 2016).

¹⁵¹ 83 FR 52073 (October 15, 2018).

¹⁵² U.S. EPA (2023b). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental

includes centralized production facilities owned by midstream companies (e.g., gathering and boosting operators) in both the oil and natural gas sectors. In reviewing the RTC for the March 2024 Final Rule, the EPA also noted that the Agency had intended to make edits to the definitions of “centralized production facility” and “well site” in 40 CFR 60.5430b to clarify how these terms relate to one another and to avoid potential confusion arising from the potential overlap between them.¹⁵⁶ In particular, the RTC indicates that the Agency intended to clarify in the definition of centralized production facility that such a facility also may include one or more onsite wells, and to clarify in the definition of well site that if a site receives liquids from one or more offsite natural gas or oil production wells, it would fall within the definition of a centralized production facility (rather than a well site). Because those additions described in the prior RTC were not included in the relevant provisions of 40 CFR 60.5430b, the EPA is proposing to add them in this proposal.

Second, based on the EPA’s review of the reconsideration petitions, the EPA now acknowledges that the operator of an offsite well may not be the same entity as the operator of the centralized production facility that gathers materials from offsite natural gas and oil production wells. Accordingly, the EPA is proposing to remove the modification criteria currently at 40 CFR 60.5365b(i)(2)(ii), which tie modification of a centralized production facility to a modification at an offsite well, because the operator of the centralized production facility may not be the same as the operator of the offsite well sending production to the centralized production facility. However, recognizing that modifications at offsite well sites can increase production sent to a centralized production facility and increase emissions, the EPA is proposing to add modification criteria for centralized production facilities that are tied to increased throughput from an offsite well. These proposed criteria differ from the current criteria (which require the owner or operator of the centralized production facility to know when a modification occurs at an offsite well),

but the EPA believes the proposed criteria will still capture situations in which an emissions increase at the centralized production facility occurs due to increases in production that result from modifications at an offsite well. Specifically, the EPA is proposing that increases in throughput that cumulatively exceed the LPE limit on throughput or the projected maximum average daily throughput established for the centralized tank battery (i.e., “design capacity”) would qualify as a modification of the centralized production facility.¹⁵⁷ The EPA is choosing throughput as a proxy for production because these two measures are closely related. An increase in production at the well site is manifested as throughput increases to a tank battery located at a centralized production facility. Production and throughput can be linked using generally accepted engineering models such as condensate rates derived from gas throughput. Throughput to the tank battery is already tracked, and various methods are available for measuring it. For tank batteries, the LPE limit on throughput is established in operating permits or in other Federal, state, local or Tribal requirements.

In developing these proposed modification criteria, the EPA reviewed how the Agency has previously addressed emissions increases related to production increases (manifested as throughput increases at tank batteries) in midstream operations that receive gas or liquids from other operations not owned or operated by the same entity, such as tank batteries at compressor stations. The EPA believes that examination of this information is relevant for modifications at centralized production facilities for the purposes of fugitive emissions components because the issues are similar: an operation receives liquids from other operations beyond their control. In the September 2020 Final Rule, the EPA explained its rationale for why different applicability criteria were appropriate for tank batteries in the midstream operations that are designed to receive liquids from multiple well sites over a longer period of time.¹⁵⁸ The EPA carried this

rationale forward in the March 2024 Final Rule, for tank batteries located in the midstream operations, to require operators of those tanks to determine the potential for emissions using throughput established in a LPE permit or the projected maximum average daily throughput.¹⁵⁹ Similarly, in the March 2024 Final Rule, the EPA finalized separate modification criteria for existing tank batteries located in the midstream operations at 40 CFR 60.5365b(e)(3)(ii)(D) which allows the increase in throughput to be compared to the same LPE limit on throughput or the projected maximum average daily throughput used in 40 CFR 60.5365b(e)(2)(iii). The EPA stated that such provisions should address the receipt of liquids from upstream production facilities owned by third parties.¹⁶⁰ The EPA now understands from the petitioners that, similar to compressor stations, centralized production facilities often are “overbuilt” to accommodate future production received from multiple well sites, and that while they can typically accommodate increases in throughput up to forecasted production used in the design, in some instances they are not in control of the offsite actions which increase that throughput. For this reason, the EPA now believes that the same rationale as the EPA used for midstream tank batteries also applies to tank batteries at centralized production facilities, which base their design on planned growth coming online over time to account for future growth, often beyond their control. Thus, for throughput changes brought on by actions (e.g., drilling a new well or fracturing or refracturing a well) at offsite well sites feeding the centralized production facility, while the EPA previously thought that tracking those actions at the offsite wells would be a straightforward method to determine if production to the centralized production facility increased (without tracking throughput), the EPA now proposes that a more appropriate approach is to determine whether a production increase would result in an increase in emissions above the previously estimated emissions based on throughput increases beyond design capacity.

The EPA believes that using increases beyond a centralized production facility’s design capacity appropriately captures emissions increases resulting from production-related changes in the method of operation of the stationary source, consistent with the definition of

¹⁵⁶ U.S. EPA. (2023b). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule (86 FR 63110, November 15, 2021; 87 FR 74702, December 6, 2022). See Response II–4–15.

¹⁵⁷ As discussed in section III.E. “Storage Vessels” the EPA is proposing changes for how throughput is determined for centralized production facilities to allow for the use of a LPE limit on throughput or the projected maximum average daily throughput.

¹⁵⁸ 85 FR 57404 (September 15, 2020). The discussion of the applicability and modification criteria for tank batteries germane for understanding how the EPA previously developed projected maximum average daily throughput determinations for the purpose of determining if an emissions increase based on throughput occurred.

¹⁵⁹ 40 CFR 60.5365b(e)(2)(iii).

¹⁶⁰ 89 FR 16982 (March 8, 2024).

“modification” in CAA section 111(a)(4).¹⁶¹ This is because a centralized production facility is designed to accommodate the receipt of gases and liquids up to its permitted or design capacity. Under the proposed change, the EPA would not consider production increases that can be accommodated under the permitted or design capacity to constitute a change in the method of operation. Thus, the Agency is proposing that such increases would not trigger a modification, as that term is defined under CAA section 111(a)(4), unless accompanied by a physical change, such as adding a tank, adding additional major production equipment, or otherwise increasing capacity.¹⁶²

In contrast, increases in production above the throughput established in an LPE limit or the design maximum average daily throughput, would be considered changes to the method of operation. Such increases are expected to cause emissions increases from fugitive emission components due to higher pressures, longer duration of flow, or more frequent flow events.¹⁶³ As discussed earlier in this preamble, the EPA has already established a procedure for determining when these increases occur, using the throughput that forms the basis for determining the potential for emissions and that is established in an LPE permit or the projected maximum average daily throughput. In this proposal, the EPA would use a parallel procedure as one method of determining whether a modification has occurred at a centralized production facility.

Third, the March 2024 Final Rule modification criteria at 40 CFR 60.5365b(i)(2)(iii) also address a production increase that occurs when an offsite well site becomes a wellhead only site and sends its production to an existing centralized production facility. The EPA proposes to delete this action from those modification criteria because, if the EPA finalizes the proposed change related to increases to throughput described above, that approach would already appropriately capture increases in throughput that

occur when a well site transitions to a wellhead only site and sends its offsite production to the centralized production facility. As these changes in throughput would be measured against the proposed increase from the design capacity, retaining this standalone modification criterion would be redundant.

Fourth, there also are potential “hardware” changes at the centralized production facility that the EPA proposes to reflect in the modification criteria because they could result in an increase in fugitive emissions. These include the replacement or modification of one or more storage vessels such that the cumulative storage capacity is increased, as these changes could increase throughput beyond design capacity and thus would be considered modifications for the same reasons as discussed above. Other hardware changes that result in additional fugitive emissions include the addition of one or more pieces of “major production and processing equipment” (with attendant additional fugitive emissions components). Because emissions increases are associated with the addition of fugitive emissions components, the Agency is proposing that they would be considered modifications, even if they are not associated with an increase in throughput above design capacity. Further, the EPA recognizes that the addition of a new onsite well (with attendant fugitive emissions components) or the fracturing or refracturing of onsite wells are within the control of the operator of the centralized production facility and may also result in the addition of fugitive emissions components and thus lead to emissions increases. Accordingly, these are included in the proposed modification criteria as well.

The EPA believes that the proposed revisions to the modification provisions would continue to capture all instances in which emissions at a centralized production facility increase. However, these revisions would base that determination on actions occurring at the centralized production facility itself. The EPA believes that the proposed revisions would appropriately focus the modification criteria on actions under the control of, or within the knowledge of, the operator of the centralized production facility rather than on actions occurring at offsite wells for which the operator may not have control or knowledge. The proposed changes are still expected to appropriately identify when there is an increase in VOC and methane emissions a) based on an increase in volumetric

throughput above the design capacity to the centralized production facility; or b) when there are additional fugitive emissions components added, but the proposed changes do focus on information known by or actions under control of the centralized production facility.

The EPA solicits comment on this proposal. (Question III.4e)

d. Well Closure Requirements

Background. In the December 2022 Supplemental Proposal, the EPA proposed requirements for well closure plans, including a requirement that the operator must submit a notification to the EPA 60 days before beginning well closure activities.¹⁶⁴ The EPA did not receive comment on the 60-day notification timeline and finalized this requirement as proposed. Reconsideration petitioners claimed that the timing components of the EPA’s well closure plan notifications could impact an operators’ ability to timely close the well.¹⁶⁵ Petitioners explained that while many well closure activities are known in advance, in some instances, the opportunity may present itself without significant advance notice.

Summary of Proposed Changes and Rationale. The EPA acknowledges the petitioners’ concerns that the requirement to submit a notification prior to the start of well closure activities could prevent the facility from permanently plugging the well in a timely manner, for instance, if they had to delay commencement of well closure activities to meet the 60 day advance notice requirement. Based on these concerns, the EPA proposes to amend the well closure provisions at 40 CFR 60.5397b(l)(2) and 60.5397c(l)(2), and 40 CFR 60.5420b(a)(4)(ii) and 60.5420c(a)(3)(ii) to allow facilities the option to submit a notification after the well closure is complete. Specifically, the EPA proposes that the owner/operator can submit the notification of intent to close 60 days before beginning well closure activities, as currently required, or may alternatively have the option of submitting a notification of closure within, but not later than, 30 days after completing the final OGI survey, or resurvey, if applicable, conducted in accordance with 40 CFR 60.5397b(l)(3) or 60.5397c(l)(3). Operators that undertake well closure activities must submit the notification in accordance with 40 CFR 60.5420b(a)(4) or 60.5420c(a)(3), which requires that the notification includes

¹⁶¹ As noted earlier in this preamble, under CAA section 111(a)(4) of the “term ‘modification’ means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. 7411(a)(4).

¹⁶² Modifications occurring from these actions are discussed later in this preamble.

¹⁶³ 83 FR 52073 (October 15, 2018). See discussion how increases in production rates causes an increase in molar flow rates and resulting increases in emissions from fugitive components.

¹⁶⁴ 87 FR 74736 (December 6, 2022).

¹⁶⁵ API–AXPC (2024b). pgs. 23–24.

contact information for the owner or operator; the United States Well Number; and the latitude and longitude coordinates for each well at the well site in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983. In situations where the owner/operator elects to submit a notification of closure rather than a notification of intent to close, the EPA proposes that the notification of closure must also include an explanation of why a notification of intent to close could not be submitted 60 days before beginning well closure activities (e.g., an explanation of why the notification requirement would have led to a delay in well closure activities). The proposed change provides additional flexibility in the submission of the notification of the well closure progress to ameliorate concerns that notification requirements could delay well closures. The EPA encourages owners/operators to conduct required well closure activities as expeditiously as possible to reduce the risk of continued emissions from unplugged idle wells.¹⁶⁶ The EPA believes that the proposed amendment incentivizes timely, well-executed closures without creating procedural barriers or subjecting operators to potential non-compliance, if the 60 day time frame for submitting a notice of intent to close cannot be met. The EPA further believes that submitting a notification of closure within 30 days after the final OGI survey or resurvey, if applicable, would not interfere with the schedule for the well closure activities themselves.

The EPA solicits comment on this proposal. (Question III.4f)

F. Storage Vessels

1. Background

NSPS OOOOb contains requirements for a storage vessel affected facility, defined as a tank battery that has the potential for VOC emissions equal to or greater than 6 tpy or methane emissions equal to or greater than 20 tpy. The 20 tpy methane threshold for applicability also applies to a tank battery under the EG OOOOc. A tank battery, according to at 40 CFR 60.5430b and 60.5430c, is “a group of all storage vessels that are manifolded together for liquid transfer. A tank battery may consist of a single storage vessel if only one storage vessel is present.” Storage vessel affected facilities under NSPS OOOOb and designated facilities under EG OOOOc must determine their applicability (*i.e.*,

the potential for VOC or methane emissions) and may include LPE limits in the determination. When determining the potential for VOC or methane emissions, operators of storage vessels not subject to LPE limits may exclude any vapor from that storage vessel which is recovered and routed to a process through a vapor recovery unit (VRU) operated in accordance with the cover and CVS requirements.

Under the March 2024 Final Rule, the applicability thresholds for tank batteries located at well sites and centralized production facilities are determined within 30 days of startup of production, or within 30 days after one of the actions described below relating to modifications. The applicability thresholds for tank batteries not located at a well site or centralized production facility (e.g., tank batteries at onshore natural gas processing plants) are determined prior to startup, or within 30 days of one of the actions described below relating to modifications, using throughput as determined by an LPE limit on throughput or the projected maximum average daily throughput.¹⁶⁷ The March 2024 Final Rule also established “modification” criteria to determine when an existing tank battery becomes subject to NSPS OOOOb. Under the March 2024 Final Rule, a “modification” of a tank battery occurs when: (1) a storage vessel is added to an existing tank battery; (2) one or more storage vessels are replaced such that the cumulative storage capacity of the existing tank battery increases; or (3) throughput to the tank battery increases, and the potential for VOC or methane emissions meets or exceeds the applicability thresholds of 6 tpy VOC or 20 tpy methane, respectively.¹⁶⁸

The EPA is proposing changes to this definition of modification at 40 CFR 60.5365b(e)(3)(ii) based on our evaluation of petitioner concerns related to centralized production facilities. Petitioners claim that a centralized production facility operator may not know when an action is occurring at an offsite well that would trigger modification at the centralized production facility.¹⁶⁹ Petitioners raised a similar issue regarding modifications for the purposes of fugitive emissions components at centralized production facilities, which are discussed in Section III.E.2.c of this preamble (“Modification Criteria for [Fugitive Emissions at] Centralized Production Facilities”). In that section, the EPA

examines the record relating to actions that trigger modifications at centralized production facilities. The discussion and rationale provided in that section, specific to actions which increase throughput, are relevant to tank batteries at centralized production facilities for the purpose of applying the modification criteria to tank batteries and are not repeated here. In parallel to proposing revisions to the modification criteria for tank batteries at a centralized production facility, the EPA also proposes corresponding changes to the determination of the potential to emit for tank batteries at centralized production facilities. The proposed revisions would allow operators to base the potential for emissions on either the throughput as determined by an LPE or the projected maximum average daily throughput as specified in 40 CFR 60.5365b(e)(2)(iii). This approach would replace the current requirement to use the maximum average daily throughput to the tank battery measured over a 30-day period of production as specified in 40 CFR 60.5365b(e)(2)(ii). This proposed revision will make the determination of the potential for emissions consistent with the methodology provided for compressor stations and onshore natural gas processing plants, which recognizes that these types of facilities are built for planned growth (with additional receipt of fluids over time) and therefore the first 30 days of production does not accurately reflect the potential for emissions.

The EPA recognizes that other issues raised in reconsideration petitions on the March 2024 Final Rule related to storage vessel affected facilities are of interest to stakeholders. The EPA is still evaluating some of those other issues. One of those issues, for example, relates to the application of LPE limit criteria when determining the potential to emit VOC or methane from storage vessels when determining the applicability of NSPS OOOOb or EG OOOOc standards. While the EPA is not proposing any specific changes related to the application of LPE limit criteria in this action, the EPA is soliciting comment from stakeholders and the public on this specific issue. Depending on the comments the Agency receives, the EPA may take further action at an appropriate time, and relatedly, solicits further comment on whether the 2024 LPE criteria should be repealed along with supporting reasons for doing so. (Question III.5a)

Section III.F.3 of this preamble provides additional background on the application of LPE limit criteria when determining storage vessel applicability to standards and our solicitation of

¹⁶⁷ 40 CFR 60.5365b(e)(2)(ii) and (iii) and 60.5386c(e)(2)(ii) and (iii).

¹⁶⁸ 40 CFR 60.5365b(e)(3)(ii).

¹⁶⁹ API-AXPC (2024b).

¹⁶⁶ 87 FR 74736 (December 6, 2022). See discussion of “Well Closure Plans.”

comment related to petitioner concerns on this issue. Aside from the definition of modification and the use of LPE for applicability, all other issues related to the storage vessel provisions in the March 2024 Final Rule are out of scope for this proposal. The EPA may propose further changes to the storage vessel provisions in the future, but this action is limited to the two identified issues for storage vessels: modification of storage vessels at centralized production facilities and LPE for storage tanks (including tank batteries, individual tanks, tanks at centralized production facilities and tanks at individual well sites).

2. Application of the Definition of Modification to Centralized Production Facilities—Additional Background and Summary of Proposed Changes and Rationale

Background. Petitioners stated that the storage vessel modification provision as it relates to centralized production facilities is overbroad and inconsistent with the CAA. They challenge the conclusion that each of the specified events of 40 CFR 60.5365b(e)(3)(ii)(C) and (D) [increase in fluids received for well sites and centralized production facilities and non-well-site facilities, respectively] constitute a physical or operational change in the method of operation and cause an increase in emissions.^{170 171} Petitioners also noted that they previously commented on the November 2021 Proposal arguing that not all of the specified events in paragraphs 40 CFR 60.5365b(e)(3)(ii)(A) through (D) constitute a physical change to the storage vessel. Within this comment on the November 2021 Proposal petitioners claim that these events are not operational changes because tanks and tank batteries in the sector are designed and operated to accommodate a wide range of conditions to reflect the varying and constantly changing operations they serve. Further, the petitioners stated that changes in throughput do not necessarily cause an increase in

emissions under the EPA's long-established principles for determining emissions increases under CAA section 111.

For these reasons, one of the petitioners¹⁷² contends that the EPA has underestimated the number of storage vessels that will be considered modified under the March 2024 Final Rule and has created significant and unfair compliance problems for operators. By way of example, they stated that midstream operators could potentially find themselves out of compliance on the March 2024 Final Rule's effective date as nearly all vessels have received additional volumes of fluids from upstream facilities since December 7, 2022.¹⁷³

As noted in section III.F.1. of this preamble, the issues raised by petitioners related to the modification criteria as they apply to storage vessels at centralized production facilities are similar to concerns expressed regarding the March 2024 Final Rule modification criteria for centralized production facilities and its consequences for triggering a modification under the new source fugitive emissions requirements. Please also refer to section III.E.2.c of this preamble for a discussion of those related issues.

Summary of Proposed Changes and Rationale. In our December 2022 Supplemental Proposal preamble¹⁷⁴ and March 2024 Final Rule preamble¹⁷⁵ response to comments, the EPA specified events of 40 CFR 60.5365b(e)(3)(ii)(A) through (D) constitute a physical or operational change in the method of operation that result in an increase in emissions. The EPA also reiterated that the events noted in 40 CFR 60.5365b(e)(3)(ii)(A) through (D) trigger re-assessment of whether emissions from the tank battery exceed one of the potential to emit (PTE) thresholds in 40 CFR 60.5365b(e)(1)(i) or (ii). If the additional throughput resulting from one of the events in 40 CFR 60.5365b(e)(3)(ii)(A) through (D) does not cause an exceedance of the

potential for emissions thresholds, then a modification has not occurred.

Under the March 2024 Final Rule at 40 CFR 60.5365b(e)(3)(ii)(C), a modification occurs at an existing production facility or centralized production facility when a new well is added or a well which supplies liquid to the tank battery is fractured or re-fractured and the VOC or PTE threshold is met or exceeded. In the March 2024 Final Rule preamble¹⁷⁶ the EPA explained that "modifications" resulting from the receipt of additional throughput do not apply to tank batteries located at compressor stations or natural gas processing plants that have no control over the receipt of fluids from upstream production facilities owned by third parties. The requirements of this provision (40 CFR 60.5365b(e)(3)(ii)(D)) apply as long as the design capacity of the tank battery accounts for the additional throughput generated from one of these actions, such that the permit has already accounted for the emissions increase from the tank battery.

As discussed in detail in Section III.E.2.c ("Modification Criteria for [Fugitive Emissions at] Centralized Production Facilities") of this preamble, the EPA re-examined the record relating to throughput increases at centralized production facilities resulting from actions at an offsite well. In short, the EPA recognizes that the design of centralized production facilities allows for processing of fluids from numerous wells, some of which are off-site and beyond the control of the operator of the centralized production facility. For this reason, related to applicability determinations for centralized production facilities at 40 CFR 60.5365b(e)(2), the EPA believes that design throughput or throughput under LPE limit is a better means of assessing the potential to emit (similar to midstream tank batteries at compressor stations or gas processing plants) than the maximum average daily throughput during the first 30 days of production (or within 30 days after triggering the emission potential assessments after an action which could result in a modification). Therefore, consistent with the rationale in Section III.E.2.c of this preamble for the proposed amendments to the modification criteria for centralized production facilities in 40 CFR 60.5365b(i) to allow the use of throughput established via LPE limits or to allow the use of projected maximum average daily throughput, the EPA proposes to amend the modification provisions at 40 CFR

¹⁷⁰ American Petroleum Institute (API) (2023). Letter to Michael S. Regan, EPA Administrator. RE: Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Including Appendix K and Social Cost of Greenhouse Gases. February 13, 2023.

¹⁷¹ GPA Midstream Association (GPA) (2024). Petition. Letter to Michael S. Regan, EPA Administrator, et al. from GPA Midstream Association. Re: Petition for Reconsideration and Request for Stay of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. May 2, 2024.

¹⁷² GPA Midstream Association (GPA) (2024). Petition. Letter to Michael S. Regan, EPA Administrator, et al. from GPA Midstream Association. Re: Petition for Reconsideration and Request for Stay of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. May 2, 2024.

¹⁷³ As noted in section II.E of this preamble, the EPA issued an IFR in July 2025, which extended the compliance deadline for these and certain other provisions. The IFR extended the modification provisions in 40 CFR 60.5365b(e)(3)(ii)(C) and (D) to January 22, 2027.

¹⁷⁴ 87 FR 74800, 74803 (December 6, 2022).

¹⁷⁵ 89 FR 16979, 16983 (March 8, 2024).

¹⁷⁶ 89 FR 16982, 16983 (March 8, 2024).

60.5365b(e)(3)(ii)(C), to delete the reference to centralized production facilities. The result of this proposed change would be that the provisions requiring emission potential assessment based on first 30 days of production and reassessment with the addition of production well or refracturing a well would only apply to tank batteries located at a well site and would not apply at a centralized production facility. The EPA also proposes to amend 40 CFR 60.5365b(e)(3)(ii)(D) to treat centralized production facilities the same as compressor stations and onshore natural gas processing plants for the purposes of determining if a modification has occurred. To enable these proposed changes, the EPA also proposes changes to the potential for VOC or methane emissions at 40 CFR 60.5365b(e)(2)(ii) and (iii) so that the same throughputs are used in the initial PTE determination as will be used in the modification determination. Specifically, the EPA proposes to amend 40 CFR 60.5365b(e)(2)(ii) to delete the reference to centralized production facilities, and to amend 40 CFR 60.5365b(e)(2)(iii) to add the reference to centralized production facilities. Thus, the Agency is proposing that for each tank battery not located at a well site, including each tank battery located at a centralized production facility, compressor station, or onshore natural gas processing plant, you must determine the potential for VOC and methane emissions prior to startup of the centralized production facility, compressor station, onshore natural gas processing plant, or other facility based on the throughput established via LPE limits or the projected maximum average daily throughput for the tank battery and reassess the potential emissions if the actual throughput for the tank battery exceeds the throughput used in the initial assessment (or most recent assessment if a previous reassessment occurred). The EPA proposes similar edits in EG OOOOc at 40 CFR 60.5386c(e)(2)(ii) and (iii), so the determination of potential for emissions at tank batteries at centralized production facilities matches those for tank batteries at compressor stations and natural gas processing plants rather than tank batteries at well sites.

The EPA believes that these proposed amendments provide clarity for the modification trigger across all midstream storage vessels. For midstream storage vessels, including storage vessels at centralized production facilities, operators would only trigger a re-assessment of the potential for emissions threshold if actual throughput

exceeds the projected maximum average daily throughput (or the throughput established in an LPE limit) used in the most recent potential for emissions calculation. The EPA also acknowledged in the July 2025 IFR preamble that the modification provisions finalized in the March 2024 Final Rule contain a degree of vagueness that allows for far more midstream storage vessels to trigger modification than the EPA estimated.¹⁷⁷ The EPA did not anticipate that these provisions would affect as many sources as petitioners have asserted. The EPA expects this proposed revision to address petitioner concerns related to the number of storage vessel tank batteries at centralized production facilities that were considered “modified” under the March 2024 Final Rule. It also addresses petitioner concerns that changes in upstream operations unbeknownst to the midstream operator could cause a large number of sources to be deemed “modified” and potentially out of compliance. The EPA solicits comment on this proposal. (Question III.5b)

3. Legally and Practicable Enforceable Limit Criteria—Additional Background and Solicitation of Comment

Background. Under 40 CFR 60.5365b(e)(2) of the NSPS OOOOb final rule, individual storage tanks and tank batteries may take into account a LPE limit for VOCs and/or methane in a State permit, general permit, or permit-by-rule when determining a tank or tank battery’s PTE for purposes of rule applicability. The March 2024 Final rule includes six criteria to determine what constitutes an LPE limit:

- A quantitative production limit and quantitative operational limit(s) for the equipment, or quantitative operational limits for the equipment;
- An averaging time period for the production limit, if a production-based limit is used, that is equal to or less than 30 days;
- Established parametric limits for the production and/or operational limit(s), and where a control device is used to achieve an operational limit, an initial compliance demonstration (*i.e.*, performance test) for the control device that establishes the parametric limits;
- Ongoing monitoring of the parametric limits that demonstrates continuous compliance with the production and/or operational limit(s);
- Recordkeeping by the owner or operator that demonstrates continuous compliance with the limit(s); and

- Periodic reporting that demonstrates continuous compliance.

One petitioner stated that while they agreed that unenforceable voluntary actions inadequately limit a storage vessel’s PTE, they believe that the LPE limit criteria promulgated in the March 2024 Final Rule go well beyond the criteria necessary for enforceability, overly burden industry, and supplant State permitting authority.¹⁷⁸

Petitioners also raised several concerns related to the LPE limit criteria included in the March 2024 Final Rule.¹⁷⁹ Petitioners noted that all NSPS OOOO rules prior to the March 2024 Final Rule allow operators to reduce the potential for emissions where a LPE limit applies and limits the storage vessel’s maximum production or operating capacity. See 40 CFR 60.5365(e), 60.5365a(e)(1), 60.5365b(e)(2), 60.5386c(e)(2). Petitioners explained that an LPE limit may exist in an operating permit or other requirement established under a Federal, State, local, or Tribal authority. However, they stated that the NSPS OOOOb and EG OOOOc define what constitutes an LPE limit. Under this LPE limit definition in NSPS OOOOb and EG OOOOc, the petitioners claimed that few, if any, existing permits or regulatory requirements contain all of the necessary criteria. Petitioners asserted that the practical impact is that, until State and local agencies revise their regulations and/or permits, operators will not have LPE limits to reduce the potential for emissions, despite many of those storage vessels actually being subject to emissions control requirements. Consequently, the petitioners argued that many storage vessels will become subject to the NSPS OOOOb or EG OOOOc where the actual emissions are below the applicable VOC and/or methane emissions thresholds. Additionally, the petitioners asserted that, even if permits or regulations were subsequently revised to meet the new criteria, storage vessel affected facilities and designated facilities cannot use the revised permit or regulatory LPE limit to redetermine and avoid continued applicability because of the “once-in, always-in” provision at 40 CFR 60.5365b(e)(4) and 60.5386c(e)(3). According to the petitioners, this situation applies even where the LPE limit adds only an administrative LPE

¹⁷⁸ Texas Oil & Gas Association (TXOGA). (2024). Petition. Letter to Michael S. Regan, EPA Administrator, from TXOGA. Request for Reconsideration of the EPA’s Final Rule “New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.” May 2, 2024.

¹⁷⁹ API & AXPC (2024b); and TXOGA (2024).

¹⁷⁷ 90 FR 35975 (July 31, 2025) (July 2025 IFR).

limit element like periodic reporting (*i.e.*, a requirement that does not impact source operations). Petitioners contend that as a result, the new Federal standards supersede State and local emission control requirements and negate the extensive resources expended by these agencies and stakeholders to develop and implement those requirements.

Petitioners also claimed that the March 2024 Final Rule fails to clarify that a VOC emissions limit may serve as a surrogate for methane emissions where VOC and methane exist in the emissions stream (*i.e.*, a reduction in VOC emissions results in functionally the same reduction in methane emissions).¹⁸⁰ While the petitioners acknowledged that this clarification would not solve all of the issues with the LPE limit definition, they suggested that it would address this one aspect of their concerns.

Petitioners also asserted that the LPE limit criteria conflicts with the regulatory standard for “maximum average daily throughput” and PTE calculation procedure under the rule.¹⁸¹ Petitioners explained that the LPE limit criteria employs a less than 30-day averaging time period as opposed to the typical standard in air permitting of a rolling 12-month average. In response to petitioner concerns related to this issue, the EPA stated in the March 2024 Final Rule preamble that a 30-day averaging time period is necessary because, under the rule, a PTE determination must occur within the first 30 days of startup.¹⁸² In other words, the petitioners contend that the EPA uses the rule’s arbitrary 30-day deadline to calculate the PTE as reasoning despite the fact that a 12-month rolling average better represents a source’s actual PTE and allows better consistency with air permitting standards.

Petitioners also expressed concerns regarding the LPE limit criteria finalized in the March 2024 Final Rule related to the reporting requirements and performance testing required to establish parametric limits.¹⁸³ Specifically, petitioners stated that the reporting requirements are an unnecessary enforcement tool if facilities need to maintain records and make them available upon request. Further, they argued that the LPE limit criteria is inappropriate for minor sources, such as storage tanks. In particular, they objected to requiring performance testing to establish

parametric limits for a limit to qualify as an LPE limit, as well as the requirement for continuous compliance monitoring with those limits.

Summary of Comment Solicitation.

The EPA continues to assess the petitioners’ concerns related to the application of LPE limit, and the Agency solicits comment from stakeholders and the public on their suggested changes to address their concerns. Specifically, the EPA solicits comment on whether any of the following changes suggested by petitioners would lead to unmitigated emissions increases and/or loopholes or whether they could lead to similar emission outcomes as the current rule while being more workable in practice:

- Revise the LPE limit criteria in NSPS OOOOb and EG OOOOc to match the language used in NSPS OOOO and NSPS OOOOa. (Question III.5c)
- Maintain the LPE limit criteria included in the March 2024 Final Rule but clarify that a VOC emissions limit may serve as a surrogate for methane emissions where VOC and methane are present in the emissions stream. (Question III.5d)
- Revise the calculation required for the PTE to be a 12-month rolling average to be more consistent with air permitting standards, such as title V. (Question III.5e)
- Remove reporting requirement in 40 CFR 60.5365b(e)(2)(i)(F), but continue to require owners and operators to maintain records and make them available upon request. (Question III.5f)
- Remove the requirement in 40 CFR 60.5365b(e)(2)(i)(C) for performance testing to establish parametric limits and the associated requirements in 40 CFR 60.5365b(e)(2)(i)(D) to do continuous compliance monitoring of those parametric limits. (Question III.5g)
- Maintain the LPE limit criteria included in the March 2024 Final Rule but clarify that operators may use an LPE production limit that accounts for annual production decline in combination with an operational limit. (Question III.5h)

The EPA is also requesting comments on the real world impact of the current LPE requirements on storage vessel applicability determinations, including information: on (1) the number of storage vessels that could become subject to NSPS OOOOb or EG OOOOc solely because existing state permits or regulatory requirements do not include all six elements of the current LPE limit definition despite these vessels having actual emissions below the applicable

VOC or methane thresholds; (2) the cost to operators and state agencies of revising existing permits and regulations to meet the current six element criteria; (3) whether existing state permitting programs achieve equivalent environmental outcomes to the federal LPE criteria without the specific elements at issue; (4) the timeline required for states to amend their permitting and regulatory programs to incorporate the current LPE limit criteria; and (5) whether, given the above, a full repeal of the March 2024 Final Rule LPE limit criteria may be merited. (Question III.5i)

4. Safety Concerns Related to Flaring Requirements at Shut-In Wells

The EPA recognizes that petitioners may have other issues with storage vessels beyond the ones indicated in section III.F.1 through III.F.3 of this preamble. For example, one petitioner¹⁸⁴ described concerns regarding the operation of control equipment during periods when a well site is shut-in. Specifically, the commenter discussed the operation of an ignition source (*i.e.*, continuously operated flares) for control of storage vessels. The petitioners raise concerns that during these events, there is potential for the flame to migrate from the flare to the storage vessels, due to the system operating at lower than typical operating pressures, which could result in a tank explosion.

The EPA acknowledges the potential risk but does not have the necessary information to fully address this petition. Therefore, we solicit comments on how often NSPS OOOOb storage vessel affected facilities are shut-in, the reasons for the shut-in, and the length of a typical shut-in. We solicit comment on information regarding explosions of an NSPS OOOOb storage vessel affected facility as well as any near misses. We also solicit comment on whether an owner or operator of a storage vessel affected facility should be exempt from operating a control device when a shut-in occurs and whether there are additional work practices that could be put in place to minimize emissions during these events (Questions III.5j–III.5k).

The EPA also solicits comment on the change in emission profile of a storage vessel affected facility after a shut-in and whether the shut-in emission profile is under 6 tpy of VOC or 20 tpy of methane. The EPA solicits comment

¹⁸⁰ TXOGA (2024).

¹⁸¹ *Id.*

¹⁸² 89 FR 16979 (March 8, 2024).

¹⁸³ TXOGA (2024); and API & AXPC (2024b).

¹⁸⁴ API (2025). Re: Request for Administrative Reconsideration of EPA’s Final Rule “New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities”—NSPS OOOObc. September 12, 2025.

on whether sites subject to a temporary shut-in could recalculate their PTE to determine the need for storage vessel control. Finally, the EPA solicits comment on whether sites subject to a temporary shut-in could be subject to an alternative standard (tons per day of VOC/tons per day of methane) to determine the need for storage vessel control (Questions III.5l–III.5n).

G. Covers and CVSs

1. Background

Under the March 2024 Final Rule, the NSPS OOOOb and EG OOOOc final standards include requirements for CVSs. CVSs route emissions from wells (*i.e.*, oil wells when routing associated gas to a control device), process controllers, pumps, centrifugal compressors, reciprocating compressors, and storage vessel affected and designated facilities to a control device or to a process. In addition, NSPS OOOOb and EG OOOOc include cover requirements to ensure compliance with the standards for centrifugal compressors, reciprocating compressors, and storage vessel affected and designated facilities.

Under the March 2024 Final Rule, each CVS must be designed and operated to capture and route all gases, vapors, and fumes to a process or to a control device and comply with an emissions limit of no identifiable emissions (NIE). NIE “means, for the purposes of covers, CVSs, and self-contained natural gas-driven process controllers and as determined according to the provisions of 40 CFR 60.5416b,¹⁸⁵ that no emissions are detected by AVO means when inspections are conducted by AVO; no emissions are imaged with an OGI camera when inspections are conducted with OGI; and equipment is operating with an instrument reading of less than 500 ppmv above background, as determined by EPA Method 21 of appendix A–7 to this part when inspections are conducted with EPA Method 21.”¹⁸⁶

Covers must form a continuous impermeable barrier over the entire surface area of the liquid in the storage vessel, over the centrifugal compressor wet seal fluid degassing system, or over the reciprocating compressor rod packing emissions collection system. Each cover opening must be secured in a closed, sealed position (*e.g.*, covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed, except during those times when it is necessary to use an

opening, such as to inspect equipment or to remove material from the equipment.

The March 2024 Final Rule also includes initial and continuous compliance requirements with the NIE requirement through OGI or EPA Method 21 monitoring and AVO inspections conducted at the same frequency as the fugitives emissions monitoring for the type of site where the CVS and cover are located.¹⁸⁷ The EPA stated in the March 2024 Final Rule that emissions detected by AVO, OGI, or EPA Method 21 constitute a deviation of the NIE requirement until a subsequent inspection determines that the CVS and cover operate with NIE.¹⁸⁸ The EPA also discussed, in the December 2022 Proposed Rule, that “[a]ny identified emissions would be a violation of this [NIE] emissions limit . . .”¹⁸⁹ Each CVS requires inspection to ensure that the CVS operates with NIE initially within 30 calendar days after startup of the affected facility routing emissions through the CVS and periodic inspections, thereafter.¹⁹⁰

CVSs and covers require annual NSPS OOOOb and EG OOOOc reporting.¹⁹¹ Required records include the date of the inspection, the method of inspection (*i.e.*, visual, AVO, OGI, or EPA Method 21), and identification of all defects and emissions found.¹⁹² For each defect or emission found, the owner or operator must record the location, a description of the defect, the maximum concentration reading if EPA Method 21 is used, the date of detection, the date of each attempt to repair the defect or emission, the corrective action taken to repair the defect or emission, and the date of final repair of the defect or emission. If a repair is delayed, the owner or operator must record the reason for delay and the anticipated date of repair.

2. Additional Background and Summary of Proposed Changes and Rationale

Background. Petitioners asserted that the NIE requirement applicable to covers and CVSs lacks reasoning, pathways to reasonably meet requirements, and technical feasibility

over the long-term.¹⁹³ Petitioners contended that fugitive leaks from covers and CVSs occur in the same way as fugitive leaks covered by the equipment leak provisions. Petitioners also stated that the EPA previously rejected the applicability of numeric emissions limitations to fugitive emissions components. Petitioners noted comments made on the December 2022 proposed rule arguing that the requirement to operate with NIE applies as a work practice standard. Petitioners asserted that they also raised concerns with the NIE requirement in the rulemaking process and contended that the EPA declined to address these concerns and did not discuss the consequences of imposing what they allege is a technically infeasible requirement. Petitioners asserted that the EPA’s approach effectively creates *per se* rule violations and that the NIE requirement is contrary to determining the BSER because no single facility has “adequately demonstrated” the BSER.

Petitioners also asserted that an NIE requirement is impossible to meet in practice, because leaks inevitably occur due to normal wear and tear (*e.g.*, a rusty bolt causing a flange leak) and often occur through events that are not reasonably within the control of the operator. Petitioners asserted that as fugitive emissions occur over time, an LDAR program allows operators to address them promptly and responsibly. For this reason, petitioners stated that the rule should differentiate between leaks appropriately attributed to the operator (*e.g.*, forgetting to close a thief hatch) versus leaks that are truly fugitive in nature, and that a violation should not occur from routine fugitive emissions as long as the appropriate action is taken. Petitioners asserted that the EPA should determine that covers and CVSs are subject to a work practice standard, not a zero emissions standard. Petitioners also requested that the EPA determine that pumps and valves required to be operated with “no detectable emissions” (NDE) are subject to a work practice standard, not a zero-emission standard, under the alternative standards for process unit equipment affected facilities.¹⁹⁴

In addition, petitioners requested that the EPA confirm that “deviations” are not necessarily “violations” and that a leak from a cover or CVS may represent a deviation but not necessarily a violation of the NIE requirement. The

¹⁸⁷ Alternatively, the owner or operator may demonstrate compliance using periodic screening or continuous monitoring requirements for advance methane detection technologies in 40 CFR 60.5398b or 60.5398c.

¹⁸⁸ See 40 CFR 60.5416b(b)(2) through (4) and 60.5416c(b)(2) through (4).

¹⁸⁹ 87 FR 74805 (December 6, 2022).

¹⁹⁰ See 40 CFR 60.5416b(a) and 60.5416c(a).

¹⁹¹ See 40 CFR 60.5420b(b)(11) and 60.5420c(b)(10).

¹⁹² See 40 CFR 60.5420b(c)(8) through (10) and 60.5420c(c)(7) through (9).

¹⁹³ API & AXPC (2024a); GPA (2024); TXOGA (2024); INGAA (2024b). Supplemental Letter to Petition for Reconsideration of Final Rule. October 15, 2024; and API & AXPC (2024b).

¹⁹⁴ See 40 CFR 60.5401b.

¹⁸⁵ The cite is 40 CFR 60.5416c for EG OOOOc.

¹⁸⁶ See 40 CFR 60.5430b and 60.5430c.

petitioner cited the 40 CFR part 71 title V permitting rules which provide that “[a] deviation is not always a violation.”¹⁹⁵

Finally, petitioners contended that the NIE requirement could have adverse emission effects because it disincentivizes the use of new detection methodologies and voluntary emissions detection efforts.

Summary of Proposed Changes and Rationale. The EPA now recognizes that even under the best scenarios, components on the CVS and cover are subject to wear and tear, and that some emissions may be beyond the control of the operator. The Agency therefore proposes that such emissions are addressed through routine monitoring and repair requirements, and that a detection of emissions does not constitute an immediate deviation, but the source instead will have the opportunity to repair.¹⁹⁶ For these reasons, the EPA believes that changes to the March 2024 Final Rule’s requirements for covers and CVS can be made that would maintain robust design requirements, while allowing for flexibility in repairing emissions and defects related to normal wear and tear, without subjecting the source to immediate non-compliance.

The EPA proposes changes to 40 CFR 60.5411b and 60.5411c to create two-fold design and operational requirements for covers and CVSs. The first part of the requirement is the design requirement. The EPA proposes to remove the requirement at 40 CFR 60.5411b(a)(3) and (b)(4) and 60.5411c(a)(3) and (b)(4) that CVSs and covers are designed with NIE. The EPA proposes no changes to any other design requirements in 40 CFR 60.5411b and 40 CFR 60.5411c. Specifically, for CVSs, these design requirements that the EPA is not proposing to remove require per 40 CFR 60.5411b(c) and 60.5411c(c) that the CVS be “of sufficient design and capacity to ensure that all gases, vapors, and fumes from the affected facility are routed to the control device or process and that the control device or process is of sufficient design and capacity to accommodate all emissions from the affected facility” and require that a design certification is submitted. Similarly, for covers, the design requirements that the EPA is not proposing to remove are the requirements at 40 CFR 50.5411b(b)(1)

and 60.5411c(b)(1) that the “cover and all openings on the cover (e.g., access hatches, sampling ports, pressure relief devices and gauge wells) shall form a continuous impermeable barrier over the entire surface area of the liquid,” the requirement at 40 CFR 60.5411b(b)(2) and 60.5411c(b)(2) that “each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed” (with some operational exceptions), and the requirement at 40 CFR 60.5411b(b)(3) and 60.5411c(b)(3) that “storage vessel thief hatch shall be equipped, maintained and operated with a weighted mechanism or equivalent, to ensure that the lid remains properly seated and sealed under normal operating conditions”.

The second part of the current regulatory standard includes the requirement to operate the CVS and cover with NIE. The EPA proposes no changes to this operational requirement in 40 CFR 60.5411b(a)(3) or 60.5411c(a)(3) and 60.5411b(b)(4) or 60.5411c(b)(4), for CVS and covers under NSPS OOOOb and EG OOOOc, respectively. The EPA does, however, propose changes to the initial and continuous cover and CVS inspection and monitoring requirements at 40 CFR 60.5416b and 60.5416c. First, the EPA proposes to add the phrase “and repair” to the inspection procedures of 40 CFR 60.5416b(a) and 60.5416c(a) in order to specify that the design and operational requirements are met through both inspections and repairs. In this same Preamble section, the EPA proposes to specify that the inspections and repair procedures are used to demonstrate compliance with both design and operational requirements for the CVS or cover (changed from demonstrating that the CVS or cover operates with NIE).

The EPA also proposes changes to the NIE test methods and procedures in section 40 CFR 60.5416b(b) and 60.5416c(b). First, the EPA proposes new criteria which demonstrate compliance with the operational NIE requirements. Through these revisions, the EPA proposes that NIE would mean operating with no emissions or defects, or when emissions or defects are found, facilities make repairs within the required timeframes or meet the delay of repair provisions when applicable. Next, in the repair provisions of 40 CFR 60.5416b(b)(5) and 60.5416c(b)(5), the EPA proposes a timeframe for repair of 24 hours, without an option for delay of repair. If a source cannot repair the emissions or defect within 24 hours, to avoid recording such emissions as deviations, they must make repairs as

soon as practicable, which includes making a first attempt at repair no later than 5 days of detecting the emissions or defect and the final repair made within 30 days of detecting the emissions or defect, or they may put the source of emissions or defect on delay of repair, if the conditions for delay of repair (e.g., repair is technically infeasible without a shutdown) are met. While the longer timeline for repair is a pathway to compliance with the operational NIE requirement, the EPA proposes to alter its position stated in the preamble of the March 2024 Final Rule that “any identified emissions would be a deviation of this emissions limitation” and proposes that a deviation of the design requirement would occur when emissions or defects are found, and the repairs are not made in the 24-hour timeframe.

For chronic leaks occurring during a year on the CVS or cover, the EPA proposes an investigative analysis. The EPA proposes that after the third emissions event in a year from the CVS or cover, an investigative analysis must be conducted within 10 days after the third emissions event or defect to determine if operation, maintenance, failure to repair, or design cause(s) caused the emissions event or defect. If the emissions event or defect is determined to be due to design cause(s), the EPA proposes that such situation constitutes a deviation of the design requirements for CVSs and covers. If the emissions or defect is determined to be due to a failure to adequately repair the source of the emissions or defect during the prior repair attempts, the EPA proposes that this situation constitutes a deviation of the repair requirements. If the facility determines emissions or defects are caused by operation, maintenance, or other cause(s), this situation constitutes a deviation of the operational requirements of the CVS or cover. The EPA proposes that the facility must determine the number of emissions or defects detected in a year on a rolling quarterly basis after the first year (i.e., count the number of emissions or defects detected in the current quarter and add to the three previous quarters).

As part of the investigative analysis, the EPA also proposes that the owner or operator must determine necessary design, equipment, operation, or other modifications to the CVS or cover to ensure that the owner or operator meets design and operational requirements. The EPA proposes that the changes must be implemented no later than 90 days after completion of the investigative analysis for design flaws, and no later than 30 days after

¹⁹⁵ See 40 CFR 71.6(a)(3)(iii)(C).

¹⁹⁶ The requirement to record and report defects and emissions still would apply as well as the requirement to report and record each defect or emissions identified during each inspection and the date of repair or the date of anticipated repair if the repair is delayed.

completion of the investigative analysis for other causes.

The EPA proposes similar changes in 40 CFR 60.5390b and 60.5394c for process controllers which route emissions to a process through a CVS, or which comply with a self-contained process controller which operates with NIE. The EPA proposes that a process controller which routes emissions through a CVS to a process will be subject to the same requirements proposed above for CVSs. The EPA proposes that self-contained process controllers operate with NIE, which includes either no emissions or defects detected, or if emissions or defects are detected, the facility repairs the emissions or defects within the expedient timeline described above for covers and CVSs. The EPA also proposes that the investigative analysis described above for covers and CVSs applies for process controllers which experience at least three emissions events or defects in a year (to be determined on a rolling quarterly basis after the first year). The EPA proposes to include the design requirement to “release gas to the downstream piping and not to the atmosphere, resulting in zero methane and VOC emissions” with current specifications in the regulatory definition of “self-contained process controller” at 40 CFR 60.5430b, in the compliance requirements for process controllers at 40 CFR 60.5390b(a)(2) and 60.5394c(a)(2).

The EPA proposes amendments to the repair requirements in 40 CFR 60.5416b(b)(5) and 60.5416c(b)(5) for CVSs, covers, and process controllers to align them with the repair provisions for fugitive emission sources and equipment leak sources at gas plants. Specifically, the EPA proposes that if the repair cannot be made within 24 hours of when the leak or defect is initially found, the facility must take a digital photograph of the source of the leak or defect, identify the source of the leak or defect on a process and flow instrumentation diagram, or tag the source of the leak or defect during the inspection at the leak or defect’s time of discovery, for identification purposes and subsequent repair. The digital photograph must include the date that the photograph was taken and must clearly identify the source of the leak or defect by location within the site (e.g., the latitude and longitude of the source of the leak or defect or by other descriptive landmarks visible in the picture). The EPA also proposes that the identified source of leaks or defects from the CVSs, covers, and process controllers must be resurveyed within the same 24 hours of repair to ensure

there are no leaks or defects after the repair. For sources with leaks identified using AVO, the facility may resurvey using either AVO, EPA Method 21, or OGI in accordance with 40 CFR 60.5397b(c)(7) or 60.5397c(c)(7). For sources with leaks identified using EPA Method 21 or OGI (except leaks at onshore natural gas processing plants), facilities may conduct the resurvey using either EPA Method 21, or OGI in accordance with 40 CFR 60.5397b(c)(7) or 60.5397c(c)(7). The facility must resurvey each source of leaks at onshore natural gas processing plants using either EPA Method 21 or OGI in accordance with Appendix K of 40 CFR part 60.

Facilities may use alternative technology requirements of 40 CFR 60.5398b and 60.5398c to monitor CVSs and covers. While the EPA proposes no amendments to the underlying periodic and continuous monitoring alternative technology requirements in the March 2024 Final Rule in this proposal, the EPA proposes conforming edits to the repair timelines and investigative analysis when using alternative technologies. Monitoring surveys using approved periodic screening already reference, at 40 CFR 60.5398b(b)(5)(v) and 60.5398c(b)(5)(v), the repair requirements in 40 CFR 60.5416b(b)(5) and 60.5416c(b)(5), and the EPA proposes that these amendments also apply to repair of emission and defects of CVSs and covers found by alternative technologies. To conform the referenced repair requirements in 40 CFR 60.5416b(b)(5) and 60.5416c(b)(5) when using alternative technologies, the EPA proposes to amend 40 CFR 60.5398b(b)(5)(v)¹⁹⁷ to state that “[w]here the phrase “after the emissions or defect is detected” is used in § 60.5416b(b)(5), the phrase “after receiving the results of the periodic screening in paragraph (b)(5)(i) of this section” shall be used.” The EPA proposes that the proposed investigative analysis for chronic leakers in 40 CFR 60.5416b and 60.5416c also applies when periodic monitoring using alternative technology finds chronic leakers.

The EPA proposes conforming amendments in the reporting and recordkeeping sections at 40 CFR 60.5420b and 60.5420c to add recordkeeping and reporting of the resurvey results, identification of leaks which facilities consider unrepairable in the expedient timeline (e.g., tagging), deviations of the design or NIE requirement, and records and reports

relating to the investigative analysis including the date of the investigative analysis and date of implementation of the modifications. The EPA also proposes conforming amendments to 40 CFR 60.5424b(c) and 60.5424c(c) to include records relating to the investigative analysis conducted in accordance with 40 CFR 60.5416b(b)(10) or 60.5416c(b)(10), when applicable.

The EPA proposes not to change the “no detectable emissions” requirement for pumps and valves complying with the alternative standards for process unit equipment affected facilities. The following paragraphs discuss the rationale for the proposed changes relating to NIE for CVSs, covers, and self-contained pneumatic controllers.

The EPA carefully considered the petitioners’ concerns regarding emissions and defects from CVSs, covers, and process controllers and re-evaluated those requirements in the March 2024 Final Rule. The provisions for the CVS and cover intend for the control device (or process) to capture and route emissions generated at the emissions source, such as a storage vessel or compressor, thereby ensuring achievement of the underlying standard of performance for the emissions source. The EPA has seen, through implementation of the NSPS, that inadequate sizing of the CVS and cover (notably on storage vessels subject to the March 2024 Final rule) can result in the inability to accommodate all emissions, leading to over-pressurization events. An example includes liquid flowing from a separator to the storage vessel.¹⁹⁸ These over-pressurization events can result in actuations of pressure-relief devices which route emissions directly to the atmosphere. In this way, the pressure-relief device routes only some emissions to the control device, so the facility fails to meet the underlying emissions standard. Therefore, the EPA continues to believe that CVS and covers must meet robust design requirements, ensured by adequate ongoing monitoring.

As discussed previously, after reviewing the comments and examples provided by the petitioners, the EPA believes that even under the best scenarios, components on the CVS and cover may have wear and tear from the environment and emissions may often be beyond the control of the operator, making them similar to other fugitive emissions sources which allow for routine monitoring and repair without

¹⁹⁷ As similar change is proposed for § 60.5398c(b)(5)(v).

¹⁹⁸ See e.g., *US and New Mexico Environment Department v. Mewbourne Oil Company*, <https://www.justice.gov/enrd/consent-decree/file/1592561/dl?inline>.

subjecting a source to an immediate deviation when emissions are detected. Similarly, even with properly designed gasket materials, which include weighted mechanisms and withstand weather conditions and exposure to the composition of the fluid in the storage vessel, dirt and debris can affect the seating and seal of covers such that emissions may occur. The EPA also supports new detection methodologies and voluntary emissions detection efforts and recognizes that a NIE requirement which subjects a source to immediate violations from the detection of emissions may be counter to the Agency's goals of incentivizing the use of advanced technology. For these reasons, the EPA believes that making changes to the March 2024 Final Rule's requirements would still enable owners, operators, and the Agency to identify design flaws in covers and CVSs while allowing for flexibility in repairing emissions and defects related to normal wear and tear without subjecting the source to immediate non-compliance.

To accommodate these changes, the EPA re-evaluated the current criteria in the March 2024 Final Rule, which requires that the source "design and operate" the CVS or cover with NIE (as determined by OGI, AVO, or EPA Method 21).¹⁹⁹ The current provisions at 40 CFR 60.5411b and 60.5411c also require that the CVS capture and route all emissions to the control device (or process, when applicable) and for the cover to form a continuous impermeable barrier over the entire surface, with all openings closed except for certain process purposes. As discussed previously, the EPA proposes no changes to these design criteria. However, in enabling a leak detection and repair paradigm for emissions and defects related to normal wear and tear, the current criteria at 40 CFR 60.5411b(a)(3) and (b)(4) and 60.5411c(a)(3) and (b)(4) to design with NIE may appear to conflict. That is, a design requirement "to capture *all* emissions" (emphasis added) is not the same as a design requirement which allows for leaks to occur (even if repairs are made). Accordingly, the EPA proposes to delete the requirement that the CVS and cover be "designed" to operate with NIE. In doing so, the EPA proposes a clear design requirement and a clear operational requirement. However, these requirements are not

entirely independent of one another because—like with all monitoring—leak detection inspections provide evidence of the underlying performance of a system. Similarly, in this case, the design of the CVS or cover impacts its proper operation. Therefore, the design and operational requirements are linked for compliance and enforcement purposes. To address this interplay, the EPA proposes changes to the "no identifiable emissions test methods and procedures" in 40 CFR 60.5416b and 60.5416c to establish how the inspection and repair program ensures continuous compliance with both the design requirement and the operational requirement.

Specifically, the EPA proposes that covers and CVSs on well, centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, and process unit equipment affected facilities used to comply with the requirements to route to a process or to control, as applicable, should be monitored for emissions and defects and those emissions and defects related normal wear and tear be repaired upon identification or within a short timeline. The EPA recognizes that a short timeline of 24 hours, while sufficient for some companies to make routine maintenance fixes such as tightening, cleaning, or lubricating equipment, might pose challenges for other companies. Therefore, the EPA requests comment on all aspects of this proposed timeline, including suggested alternative timelines and supporting rationales. (Question III.6a) Further, the EPA believes that fixes which take longer than 24 hours could be indicative of a larger problem, such as a design flaw, and potentially signal a deviation of the design requirements. Deviations suggest potential violations with the design requirement, but they are not automatically considered a violation. Consistent with the current requirements, owners and operators must record and report a description of the emissions or defect, each attempt to repair the emissions or defect, each corrective action taken to repair the defect, and the date of repair completion. The EPA will use this information, and/or other credible evidence or inspections, to determine whether a violation of the design requirement has occurred.²⁰⁰

The second proposed change to the current provisions recognizes that in addition to requirements to design the

CVS and cover to capture and route all emissions to the control device, there is an ongoing operational requirement to operate with NIE. Compliance with the operational requirement includes a proposed leak detection and repair program. While the 24-hour repair timeline also applies, sources may also demonstrate compliance with the operational requirement by making repairs on a longer timeframe. For the reasons discussed above, the EPA believes that defects which require longer than 24 hours to repair indicate a design flaw. However, the EPA still believes there should still be a pathway towards compliance for the operational requirements. Therefore, a source which cannot repair within 24 hours may still make repairs under the current timeline of "as soon as practicable," but no later than 5 days for the first attempt at repair and 30 days for the final repair (counted from the detection of the emissions or defect). Sources which comply with these operational requirement timelines may also place equipment on delay of repair (DOR) for valid reasons, as currently provided in the rule. Therefore, the EPA is not proposing to change the current DOR provisions for the 5/30 day repair timelines. As discussed previously, the EPA proposes that a deviation of the design requirement occurs when a facility detects emissions and cannot complete repair in a quick and timely (*i.e.*, 24 hours) manner. The EPA proposes that deviations of the requirement to operate with NIE occur when a facility detects emissions using the selected method, but repairs fail to occur within 5/30 days and the DOR provisions do not apply.

In addition to deviations of the design requirement for repairs which cannot be made in 24 hours, the EPA proposes an investigative analysis for chronic leakers to further synchronize the design and operational requirements. The EPA believes that continued detection of emissions or defects from the same CVS or cover indicates failures of the system due to design, operation, maintenance, failure to adequately repair, or other causes. For this reason, the EPA proposes that after the same CVS or cover experiences emissions or defects three or more times in a rolling calendar year, the facility must perform an investigative analysis. The EPA proposes this threshold because it represents a reasonable indicator that an underlying design, operational, or maintenance issue exists. A first leak occurrence can often be reasonably attributed to normal wear and tear. A second emission occurrence may signal

¹⁹⁹ 89 FR 16986 (March 8, 2024). See discussion where the EPA states that "[t]he NIE standard reflects this compliance assurance and demonstration requirement and, for the reason explained above, is an emission limitation of zero emissions, to be demonstrated by OGI, EPA Method 21, or AVO inspection."

²⁰⁰ 87 FR 74805 (December 6, 2022). See discussion where the EPA previously took the position that such identified emissions were violation of the NIE emissions limit.

a developing issue but could still reasonably be attributed to normal wear and tear. However, a third emission occurrence involving the same cover or CVS would strongly signal a larger issue that warrants a formal resolution and potentially enforcement, because the design and operational ability of the CVS to route all emissions to the control device impacts the 95 percent control BSER for the underlying emission source. The EPA proposes that the facility conduct an investigative analysis within 10 days after detecting the emissions or defect for the third time in a rolling calendar year, and the owner or operator must determine the cause of the defect. The EPA proposes that if the design caused the emissions or defect, this constitutes a deviation of the design requirement; if a failure to adequately repair the source of the emissions or defect during prior attempts caused the emissions or defect, this constitutes a deviation of the repair requirements; and if due to operation, maintenance, or other cause(s), this constitutes a deviation of the operational requirements of the rule. Following the analysis, the owner or operator must determine what corrective actions are necessary to ensure the design, operational, repair, or other requirements are met and must implement the corrective actions. For design flaws, the EPA proposes that the corrective actions must be made no later than 90 days after completion of the investigative analysis and for other flaws, the Agency proposes that the facility must complete corrective actions no later than 30 days after completion of the investigative analysis. This repair timeline is consistent with already established repair timeline requirements for fugitive emissions and covers and CVSs.^{201 202}

The March 2024 Final Rule has minimal requirements for records and reports for emissions or defects, due in part to the fact that the EPA believed that the burden of immediate and continued non-compliance with the NIE requirement (until repair) incentivized timely repairs. With the proposed changes to NIE, the NIE monitoring program would more closely resemble traditional leak detection and repair requirements (including in the March 2024 Final Rule), which requires more robust repair and resurvey criteria and recordkeeping and reporting requirements. For this reason, the EPA also proposes the following changes: a definition of what constitutes a “repaired” CVS and cover; specific

resurvey requirements to be conducted after repair; and identification of leaking components (which are not repaired during the inspection or within 24 hours of when the leak or defect is initially found). Specifically, the EPA proposes the following definition of “repaired” for covers and CVSs:²⁰³

For the purposes of covers, closed vent systems, and self-contained natural gas-driven process controller affected facilities, that the cover, closed vent systems, or self-contained natural gas-driven process controller is adjusted, replaced, or otherwise altered, in order to eliminate defects or emissions detected by AVO when inspections are conducted by AVO; eliminate emissions imaged with an OGI camera when inspections are conducted with OGI; eliminate emissions with an instrument reading of 500 ppmv above background or greater, as determined by Method 21 of appendix A–7 of this part when inspections are conducted with Method 21; and is re-monitored in accordance with the provisions of § 60.5416b(a) and (b), to verify that emissions and defects are no longer detected. Emissions imaged by OGI may be re-monitored with OGI or Method 21 of appendix A–7. Emissions detected by Method 21 of appendix A–7 may be re-monitored with OGI or Method 21. Emissions or defects detected by AVO may be re-monitored by AVO, OGI, or Method 21 of appendix A–7.

The EPA believes that a definition of “repaired” aligns the CVS and cover requirements with those for fugitive emissions components affected facilities and process unit equipment affected facilities and provides clear expectations for compliance with the requirement to “repair” components found to be leaking during initial and periodic inspections. Within the definition of “repaired” and the repair requirements for CVSs and covers, the EPA also believes that components require resurveying to ensure the repair’s effectiveness. The proposed resurvey requirements offer flexibility to use any method (e.g., OGI, EPA Method 21, or AVO) of detection for leaks or defects detected by AVO, and either EPA Method 21 or OGI for leaks and defects detected by either. This proposed requirement also is consistent with the repair requirements for fugitive emissions components affected facilities and process unit equipment affected facilities. In addition, if the facility does not complete the repair during the inspection in which the facility initially finds a leak or defect, the EPA proposes to require identification methods of

leaks or defects. This change ensures that leaking components can be tracked and identified for repair at a later date. Identification methods include a digital photograph, identification on a process and flow instrumentation diagram, or tagging. These requirements also ensure consistency with the requirements for fugitive emissions components affected facilities and process unit equipment affected facilities. The EPA proposes to include records and reports for these additional requirements.

The EPA proposes similar changes to require an investigative analysis when emissions are detected through periodic screenings under the alternative technology standards for covers and CVSs. Because of additional time required to receive results of the periodic screenings, as is with inspections conducted using AVO, OGI, or EPA Method 21, the shortened timelines for repair will begin once the results of the alternative technology monitoring are available. Also, while periodic monitoring using alternative technology requires an investigative analysis, the investigative analysis in 40 CFR 60.5398b and 60.5398c does not provide a timeline for implementing changes when the leaks are identified, which could result in ongoing emissions or defects from the same covers and CVSs. For this reason, the EPA proposes to require the investigative analysis proposed in 40 CFR 60.5416b(b)(10) and 60.5416c(b)(10) when conducting periodic monitoring of covers and CVSs using alternative technologies. The EPA proposes not to apply the proposed investigative analysis in 40 CFR 60.5416b and 60.54165c to covers and CVS inspections conducted with continuous monitoring using alternative technologies because the continuous monitoring requirements of 40 CFR 60.5398b and 60.5398c already provide for continuous improvement to reduce emissions below the action level.

With the proposed changes to the NIE operational requirements to include repair and investigative analysis requirements, the EPA proposes changes to the definition of NIE in 40 CFR 60.5430b and 60.5430c. The EPA proposes that operating with NIE means operating with less than 500 ppm above background when monitoring with EPA Method 21, operating with no emissions detected by AVO when monitoring with AVO, or operating with no emissions imaged when monitoring with OGI. The EPA also proposes that NIE requires imaging of emissions using one of the methods (AVO, OGI, or EPA Method 21 of appendix A) but requires repairs according to the proposed timeline or are placed on DOR, when applicable.

²⁰³ For reasons discussed later in this section, the EPA proposes that the same requirements that apply to covers and CVSs also apply to self-contained natural gas-driven process controller affected facilities.

²⁰¹ 89 FR 17157 (March 8, 2024).

²⁰² 89 FR 17102 (March 8, 2024).

Similarly, a self-contained process controller, defined at 40 CFR 60.5430b and 60.5430c as “a natural gas-driven process controller that releases gas into the downstream piping and not to the atmosphere, resulting in zero methane and VOC emissions,” exhibit the same presence of potential sources of normal wear and tear emissions on the “downstream piping.” Therefore, the EPA believes that these sources also should be allowed the benefit of an attempt at quick repair of emissions or defects before a deviation occurs. Self-contained process controllers already reference the NIE requirements at 40 CFR 60.5416b(b) and 60.5416c(b). The EPA proposes that the requirements for repair and investigative analysis, which are currently proposed for CVSs and covers in 40 CFR 60.5416b and 60.5416c, also apply for self-contained process controllers. In addition, to provide a citation for deviations of the design requirement for the purposes of self-contained process controllers which do not timely repair, the EPA proposes to add a design requirement to the standards for self-contained process controllers. The definition of self-contained process controller at 40 CFR 60.5430b and 60.5430c currently includes a design requirement and the EPA proposes to include the requirement to design the self-contained process controller so that it “releases gas into the downstream piping and not to the atmosphere, resulting in zero methane and VOC emissions” at 40 CFR 60.5390b(a)(2) and 60.5394c(a)(2).

Finally, regarding the “no detectable emissions” requirement for pumps and valves under the alternative standards for process unit equipment affected facilities at 40 CFR 60.5401b(b)(3) and (f)(3) and 60.5401c(b)(3) and (f)(3), the EPA proposes not to change this requirement to a work practice standard. When establishing standards for equipment leaks from onshore natural gas processing plants, NSPS KKK²⁰⁴ referenced the requirements in NSPS VV. When the EPA proposed²⁰⁵ and promulgated²⁰⁶ NSPS OOOO, the requirements for equipment leaks from onshore natural gas processing plants were updated to reflect the requirements in NSPS VVa²⁰⁷ and were included in the final standards for NSPS OOOO and carried forward into NSPS OOOOa.

In the March 2024 Final Rule, the EPA finalized the results of the technology review of the LDAR standards at natural gas processing

plants to require a bimonthly OGI LDAR program following appendix K. As explained in the November 2021 proposal, the EPA believes that a Method 21 monitoring program based on the requirements of NSPS VVa achieves similar emission reductions to the bimonthly OGI LDAR program.²⁰⁸ Therefore, in the March 2024 Final Rule, the EPA also finalized a Method 21-based LDAR program based on the requirements of NSPS VVa as an alternative to bimonthly OGI surveys. NSPS VVa included the same standards as NSPS VV for pumps and valves, which are designated to operate with “no detectable emissions.” These standards were proposed as “leakless” equipment alternatives to a leak detection and repair (*i.e.*, work practice) program. The EPA stated in the preamble to the proposed rule for NSPS VV that “sealless pumps are at least equivalent to dual mechanical seals with barrier fluid degassing vents connected to control devices in controlling fugitive emissions. Therefore, the proposed standards allow them for owners/operators who wish to use them. Sealless pumps would be required to operate under a “no detectable emission” limit as discussed in *Leakless Equipment* in this section.”²⁰⁹ For valves, the EPA proposed in NSPS VV that “[e]quipment specifications considered for valves were diaphragm valves and bellows-sealed valves . . . the use of these valves would be at least equivalent [to Regulatory Alternative IV] because they eliminate leakage of VOC.”²¹⁰ The use of such valves is allowed as an alternative. These valves would be required to operate under a “no detectable emission” limit as discussed in the *Leakless Equipment* discussion of this section.”²¹¹ The *Leakless Equipment* section of the proposal for NSPS VV stated that “the use of this equipment achieves excellent control (100 percent) of fugitive emissions” and that the “use of leakless equipment is clearly equivalent if not better than the proposed standards for pumps, compressors, and valves and the proposed standards would allow the use of such equipment as an alternative to the required practices. The leakless equipment would be required to be operated with “no detectable emissions” at all times when it is in

service.”²¹² The requirements at 40 CFR 60.482–2a(e) and 60.482–7a(f) require annual inspections for compliance with the NDE requirement and do not offer the opportunity for leak detection *and repair* to ensure compliance.

Because NSPS OOOOb and EG OOOOc neither proposed nor finalized different requirements from NSPS VV, and then VVa, for pumps and valves complying with NDE, the requirement in NSPS OOOOb and EG OOOOc is that the pumps and valves must operate with NDE at all times. In addition to the NDE operational requirements, an NDE pump must be designed such that it has no externally actuated shaft penetrating the pump house, and NDE valve must have no externally actuated mechanism in contact with the process fluid. These equipment design requirements ensure that compliance with an NDE requirement is feasible. The EPA notes that a source is not required to use the NDE pump or valve requirements and may instead comply with monthly EPA Method 21 monitoring and weekly visual inspections (for pumps) or quarterly EPA Method 21 monitoring (for valves) which do allow for leak detection and repair to ensure compliance.

The EPA solicits comment on all aspects of the proposed changes to the CVS requirements. (Question III.6b) The EPA is specifically taking comment on whether these changes fully address concerns raised by petitioners regarding the CVS monitoring and repair requirements not recognizing the unique challenges the oil and gas industry, specifically, because of the fact that facilities have many remote sites where rapid repair may be significantly more challenging than facilities such as refineries or chemical plants that are staffed twenty four hours a day. Petitioners expressed concerns that the current NIE requirements create perverse incentives that discourage the use of advanced detection technologies or proactive voluntary monitoring. The Agency is also taking comment on the impacts that these proposed provisions may have on willingness to use alternative monitoring approaches. (Question III.6c)

More specifically, the EPA solicits comment on petitioners’ suggestion that the NIE standard for CVSs should be replaced with an LDAR work practice approach more consistent with the framework applied to fugitive emissions components. The EPA takes comment on petitioners’ arguments that in many cases the components of a CVS (valves, pipes and connectors etc.) are identical

²⁰⁸ 86 FR 63233 (November 15, 2021).

²⁰⁹ 46 FR 1144 (January 5, 1981).

²¹⁰ 46 FR 1141 (January 5, 1981). Regulatory Alternative IV was monitoring and equipment specifications.

²¹¹ 46 FR 1144 (January 5, 1981).

²¹² 46 FR 1148 (January 5, 1981).

²⁰⁴ 49 FR 22598 (May 30, 1984).

²⁰⁵ 76 FR 52738 (August 23, 2011).

²⁰⁶ 77 FR 49490 (August 16, 2012).

²⁰⁷ 72 FR 64883 (November 16, 2007).

to the components covered by the fugitive program. (Question III.6d)

The EPA also solicits comment on what specifically such an approach (similar to the LDAR work practice standard) might entail. In particular, the Agency takes comment on whether an LDAR approach could be designed with additional safeguards to account for the fact that unlike other components of the existing LDAR program, CVS are integral to the ability to control any emissions that have been captured and are being routed to the control device through the CVS (Question III.6e).

The EPA further solicits comment on the extent to which the inadequate or undersized tank design is the underlying cause of emissions from CVS on storage vessels and whether the proposed NIE requirements address the challenges the industry faces. (Question III.6f) Additionally, are there better systematic approaches to identifying all under-designed CVS than a requirement to operate CVS with NIE? The Agency is considering whether an inability to repair within 24 hours is an appropriate way to identify systems with design flaws, and what the appropriate criteria and requirements are to address chronic leakers under an NIE or another approach. (Question III.6g)

H. Control Devices

1. Background

In the March 2024 Final Rule, the EPA finalized various requirements regarding control devices. Since the publication of this rulemaking, reconsideration petitioners have raised several issues on the March 2024 Final Rule requirements for control devices.²¹³ In this action, the EPA proposes changes to the March 2024 Final Rule related to flame monitoring data deviations, control device alerts, visible emissions test conditions for fugitive emissions, control devices used on a temporary basis, temporary process controllers used on temporary control devices, and control device categories. In addition, the EPA is not proposing changes but is instead soliciting comment on continuous burning pilot flames, backup control devices, and standalone temporary process controllers.

²¹³ API & AXPC (2024a); Environmental Integrity Project (EIP), et al. (2024). Letter to Michael S. Regan, EPA Administrator, from EIP, et al. Re: Petition for Reconsideration of the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Final Rule, 89 FR 16,820. May 7, 2024; and API & AXPC (2024b).

a. Continuous Burning Pilot Flame

Background. Petitioners requested that the EPA revise the continuous burning pilot or combustion flame requirement from “at all times of operation” to “at all times when emissions from affected facilities are routed to the control device.”²¹⁴ Petitioners also requested that the continuous pilot requirements exclude times when a site is not operating (e.g., an emergency shutdown) and the pilot or combustion flame is also shut down.

Petitioners explained that pilot flames go out for a variety of reasons and that the suggested revised language of “at all times when emissions from affected facilities are routed to the control device” allows operators to maintain compliance by temporarily isolating the affected facility from the control device while addressing a known pilot outage situation. In addition, the petitioners claimed that this flexibility reduces the need for a site shutdown to address a pilot outage, which may result in greater emissions than a pilot flame outage.

Petitioners further asserted that maintaining a continuous pilot flame creates an environmental disbenefit by burning more fuel and generating unnecessary emissions when no vent streams are routed to the control device. As an alternative, the petitioners suggested the use of an automatic ignition system which can light a pilot or combustion flame only when needed to control emissions from affected sources. Petitioners recommended that the EPA revise the continuous pilot requirements to clearly exclude times when a site is not operating (e.g., an emergency shutdown). Petitioners explained that, during these instances, the combustion control device also has to shut down. Therefore, the combustion control device may not have a pilot or combustion flame due to safety considerations or have a lack of fuel gas where field gas is used as the pilot.

Summary of Comment Solicitation. The March 2024 Final Rule, past iterations of the NSPS (OOOO and OOOOa), and the Part 60 General Provisions (40 CFR 60.18(c)) necessitate that flares and ECDs have a combustion (i.e., pilot) flame present at “all times of operation.” Currently, the EPA understands that owners and operators primarily use natural gas from their production streams to fuel the continuously lit pilot flames. At sites without sufficient natural gas, or sites with a lot of sour gas in their streams, owners and operators instead rely on

propane not from their production streams to fuel pilot flames. Some reconsideration petitioners contend that the usage of propane in these scenarios contributes to unnecessary emissions, particularly when nothing is routed to the control device.²¹⁵ However, the EPA has not received information on the incidence of sites that are unable to route on-site gas to fuel the continuous pilot flame and whether the additional emissions from this process are substantial. Therefore, the EPA has not been able to quantify the additional emissions emitted from the usage of propane in these scenarios.

While petitioners want the EPA to change the provision from at “all times of operation” to at “all times when emissions are routed to the control device,” at this time the EPA is maintaining the provision as stated in the March 2024 Final Rule. The EPA is not proposing any changes to these requirements in this action. The EPA has opined in previous rulemakings on the reliability and performance of automatic igniter pilots.²¹⁶ In short, the EPA has not received sufficient information that suggests that automatic igniters perform comparably to continuously lit pilots. Put another way, the EPA’s assessment of automatic igniter pilots is that they often fail and continue to have reliability issues, which results in uncontrolled venting when emissions are routed to the control device. Reasons for this insufficiency, compared to continuously lit pilot flames, include the rapid degradation of automatic igniters over time, the instability in the flame caused by the intermittent nature of the device, the high frequency of reignition failures, and the delays between ignition and the point at which streams are routed to the control devices. A comprehensive study of combustion-based control devices at oil and gas facilities corroborates these findings.²¹⁷ More specifically, a review of those results indicates that the incidence of unlit flares exceeded expected values, even for flares equipped with automatic flame re-igniter technology. Thus, relying on automatic igniter pilot flames in lieu of more reliable technology, such as

²¹⁵ EIP, et al. (2024); and API & AXPC (2024b).

²¹⁶ U.S. EPA. (2023b). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule (86 FR 63110, November 15, 2021; 87 FR 74702, December 6, 2022). See Response II–17–2.

²¹⁷ Genevieve Plant et al., Inefficient and unlit natural gas flares both emit large quantities of methane. *Science*, 377,1566–1571 (2022).

²¹⁴ API & AXPC (2024b).

continuously lit pilot flames, could increase the rate of unlit flares and lead to dramatically higher emissions of methane and VOC from uncontrolled venting. Some States do allow for the usage of automatic igniters in their provisions, but the provisions are typically narrow in scope. For example, New Mexico allows for ECDs to use automatic igniters during start-up procedures, or when reigniting the continuous pilot flame after it went out.²¹⁸ Similarly, in the March 2024 Final Rule, the EPA allowed automatic igniter pilots only to reignite the continuous pilot flame, not to replace it outright.²¹⁹

Since the EPA has not received any recent information indicating that the technology or reliability of these automatic igniter pilot has changed and improved, in this proposed rule the EPA solicits comment on the reliability, efficacy, and overall performance of automatic igniter pilot technology to ascertain if the devices perform comparably to continuously lit pilot flames. Moreover, the EPA solicits comment on the number of sites that have to use additional fuel (*i.e.*, not from their production streams) to sustain a continuous pilot flame. EPA also solicits comment on the emissions and costs associated with maintaining a continuous pilot light when no emissions from the unit are being sent to the flare (whether the fuel used for the pilot light is an additional fuel (such as propane) or from the sites production stream (*e.g.*, natural gas)). (Question III.7a)

b. Flame Monitoring Data Deviations

Background. The March 2024 Final Rule requires owners and operators to continuously monitor that a combustion flame is lit at all times of operation in their combustion-based control device(s). The presence of a combustion flame is measured parametrically by a thermocouple that records the temperature of the device. The thermocouple system, in turn, must record a value at least once every 5 minutes of operation. Currently, any lack of (*i.e.*, failure to collect) monitoring data not directly related to a malfunction of the combustion-based

control device(s) results in a deviation.²²⁰

Petitioners requested the EPA revise these provisions so that a lack of control device monitoring data does not automatically constitute a deviation.²²¹ Petitioners have noted that their data acquisition and storage systems sometimes malfunction independently of the control device. As such, petitioners contend that a lack of monitoring data (*e.g.*, a gap in the data when the monitoring equipment was not working properly due to a telecommunications loss rather than a process failure) should not be considered a deviation, provided that other available information (*i.e.*, other data which was recorded) indicates the presence of a pilot flame. For instance, if a combustion-based control device with no automatic igniter pilot installed had high temperature readings that indicate a lit flame before and after the lapse in data recording, and the lapse in data recording was relatively short, that would provide a reasonable assurance that the control device itself properly operated during the lapse in data recording.

Summary of Proposed Changes and Rationale. Under the March 2024 Final Rule, any lack of monitoring data not directly related to a malfunction of the combustion-based control device results in a deviation. Here, the EPA proposes to revise the March 2024 Rule to clarify that time-limited gaps in pilot or combustion flame monitoring data do not automatically constitute a deviation, if other available documented information indicates a pilot flame's presence during the data gap, coupled with a confirmation that the data gap was due to data collection equipment problems. Consistent with the current monitor availability requirements specified throughout NSPS OOOOb and EG OOOOc, a deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day. Under this proposed rule, the 75 percent monitor availability requirement would apply to the combination of both the primary monitoring data and other available documented information, for those periods where there is a gap in the primary monitoring data. Specifically, the EPA proposes to make changes to NSPS OOOOb (40 CFR 60.5417b(g)(6)(iii) and 60.5417b(i)(6)(v)) and EG OOOOc (40 CFR 60.5417c(g)(6)(iii) and 60.5417c(i)(6)(v)).

²²⁰ 40 CFR 60.5415b(f)(1)(vi) and 60.5415b(f)(1)(xi)(E).

²²¹ EIP, et al. (2024); and API & AXPC. (2024b).

The EPA recognizes the petitioner's concerns that gaps in (or the absence of) flame monitoring data may result from interruptions in recordings by data acquisition and storage systems rather than from an actual loss of flame or improper operation. As a result, the EPA proposes to consider additional available documented information, such as combustion-based control device data from before and after the lapse that indicates a pilot flame's presence during the data gap, before determining whether a deviation occurred. By considering this additional information, the EPA provides flexibility for industry to meet the monitoring requirements while still maintaining accountability for ensuring continuous pilot flames. If other available documented information indicates a pilot flame's presence during the data gap, the EPA clarifies that a deviation has not occurred. With this proposed change, the EPA believes that allowing operators to demonstrate, through supplemental documentation, that the data gap did not stem from an unlit flame would be responsive to petitioners' concerns.

c. Control Device Alerts

Background. The March 2024 Final Rule requires owners and operators to report any instances in which a pilot or combustion flame becomes unlit to the "nearest" control room.²²² In a recent letter the EPA received from some industry stakeholders, petitioners suggest removing or revising this requirement.²²³ Petitioners argued that the installation and maintenance of reliable data acquisition and storage systems are particularly difficult at remote sites, largely due to the cost associated with installing new telecommunications to automate alarm systems. Furthermore, petitioners claimed that implementing these telecommunications upgrades often requires extensive permits and approvals from various federal agencies.²²⁴ For sites that have access to telecommunications, petitioners argued that the provisions as written are untenable. Specifically, petitioners contended that the requirement to notify the nearest control room unnecessarily restricts facilities as the nearest control room (or closest facility) might not be best suited to address the unlit control device. Petitioners claimed that operators often rely on centralized dispatch control facilities stationed

²²² 89 FR 17089 (March 8, 2024).

²²³ 89 FR 17089 (March 8, 2024). EIP, et al. (2024); and API & AXPC (2024b).

²²⁴ *e.g.*, Federal Trade Commission, Federal Aviation Administration, Bureau of Land Management.

²¹⁸ New Mexico Admin Code 20.2.50.

²¹⁹ U.S. EPA. (2023b). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule (86 FR 63110, November 15, 2021; 87 FR 74702, December 6, 2022). See Responses II-17-1, II-17-2, and II-17-22.

sometimes miles away (or in another state) from the location to respond to such issues.

Summary of Proposed Changes and Rationale. In the current rule, an unlit pilot or combustion flame requires that an alert be sent to the nearest control room. The EPA proposes to revise the requirement to allow owners or operators to send these alerts to either the nearest control room or to a centralized control room during instances of an unlit pilot or combustion flame. Specifically, the EPA proposes to make changes to NSPS OOOOb (40 CFR 60.5412b(a)(1)(viii), 40 CFR 60.5412b(a)(3)(viii), 40 CFR 60.5413b(e)(2), 40 CFR 60.5415b(f)(1)(vii)(A)(1), and 40 CFR 60.5417b(d)(8)(i)) and EG OOOOc (40 CFR 60.5412c(a)(1)(viii), 40 CFR 60.5412c(a)(3)(vii), 40 CFR 60.5413c(e)(2), 40 CFR 60.5415c(e)(1)(vii)(A)(1), and 40 CFR 60.5417c(d)(8)(i)).

The EPA considers that a centralized control room (or control center) equipped with reliable telecommunications to collect and store data works as an acceptable alternative to the March 2024 Final Rule requirements to report lapses in pilot or combustion flame lighting to the nearest control room, even if that control room is located further away from the combustion device because that centralized control room may be better equipped and situated to respond to the unlit flame in an efficient and timely manner. Take, for example, a hypothetical situation where the nearest control room is 3 miles from the site (as measured on a map in a direct line “as the crow flies”) and a centralized control room is 50 miles from the site. The EPA finds no reason to limit the alert to the control room at 3 miles and prohibit the alert from instead going to the control room at 50 miles.

The EPA originally included the requirement for sending alerts when the pilot or combustion flame becomes unlit to the nearest control center because of its proximity to the site. When equipped with proper telecommunications equipment, the nearest control room (or control center) remains an effective option, and the EPA will continue to allow it as one of the locations to fulfill this requirement. However, the EPA acknowledges that sites lacking the ability to address the unlit flame from their nearest control room currently rely on resources from a centralized control room, regardless of where the owner or operator first sends the alert. Since the response time should remain unchanged under these circumstances, allowing owners and operators to directly send

alerts to a centralized control room should not negatively impact the time taken to address the issue. In addition, the EPA agrees with petitioners that adding certain telecommunications equipment to sites in remote locations could have additional installation costs and may require a burdensome permitting process. Allowing operators the option to send the alert to an established centralized control room would provide flexibility and reduce burden on industry, while maintaining the effectiveness of the alert systems at the same level as prescribed in the March 2024 Final Rule.

d. EPA Method 22 “As Found” Conditions

Background. The March 2024 Final Rule requires operators to conduct 15-minute EPA Method 22 visible emissions observations (*i.e.*, a determination of whether fugitive visual emissions occur) at least once each calendar month for various operating scenarios while each affected combustion control device operates.²²⁵ Petitioners requested greater flexibility for operators to conduct EPA Method 22 (40 CFR part 60, Appendix A–7) observations.²²⁶ Petitioners explained that due to substantial investment and ongoing efforts to maximize gas recovery for sales prior to liquids entering storage vessels, routing to a combustion control device occurs only intermittently. As a result, they argued that any EPA Method 22 observation conducted in the “as-found” condition of the combustion control device should count towards satisfying the monthly requirement. Otherwise, the petitioners cautioned that requiring operators to conduct EPA Method 22 observations only when combustion control devices actively receive emissions from affected and designated facilities would make compliance infeasible or force operators to intentionally flare.

Summary of Proposed Changes and Rationale. The EPA proposes to add a 24-operating hour “grace period” beyond each calendar month test period to allow operators to complete the monthly EPA Method 22 observation under normal operating conditions for each affected source. Specifically, the EPA proposes changes to NSPS OOOOb (40 CFR 60.5412b(a)(1)(ix), 40 CFR 60.5413b(e)(3), 40 CFR 60.5415b(f)(1)(vii)(A)(2), and 40 CFR 60.5417b(d)(8)(v)), and EG OOOOc (40 CFR 60.5412c(a)(1)(ix), 40 CFR 60.5413c(e)(3), 40 CFR

60.5415c(e)(1)(vii)(A)(2), and 40 CFR 60.5417c(d)(8)(v)).

The EPA recognizes that, due to various circumstances, operators may be unable to perform the required monthly EPA Method 22 observation. However, the EPA finds that performing a monthly EPA Method 22 test under “as found” conditions would not always comprehensively represent the applicable source’s operation. For example, if the source is not operating at the time a facility performs an “as found” EPA Method 22 test, the EPA Method 22 results would indicate no presence of fugitive visual emissions. However, any such observation in that situation would stem from the source not being in operation, as opposed to confirming that the source operated without emitting fugitive visible emissions. Put another way, in order to determine if the combustion device is leaking gas one needs to observe the device with gas flowing through it. Observing no leaks when no gas is flowing in the device does not necessarily mean that the device is operating properly. By way of analogy, a plumber needs to observe a drainpipe with water flowing through it in order to determine if the drainpipe is leaking. If a plumber looks at a drainpipe while no water is flowing through it and sees no leaks, that does not necessarily mean the pipe is sound because it could leak as soon as you run water through the pipe due to a problem that was not otherwise easily observable without water running through the pipe.

With the proposed 24-operating-hours (as opposed to clock-hours) grace period being allowed after the conclusion of each calendar month in order to perform the monthly Method 22 observation, the EPA believes that these changes provide a reasonable accommodation to account for intermittent process flow, unpredictable operational schedules, and the time needed for staff to reach the site to perform the test.²²⁷ The EPA further notes that if a facility utilizes the proposed 24 operating hours grace period, the facility cannot use that particular EPA Method 22 observation for the calendar month in which the “grace period test” occurred. That is, the “grace period test” would apply to the month with the missed “original” EPA Method 22 test, and a standard EPA Method 22 test would still need to occur in the month that the “grace period test” occurred (with the two observations separated by at least 15 days as currently prescribed by the

²²⁵ 89 FR 17095 (March 8, 2024).

²²⁶ API & AXPC (2024b).

²²⁷ For example, if a Method 22 test could not be completed in July, the 24-hour grace period would start with Operating Hour 1 in August.

rule). The EPA solicits comment on whether a 24-operating-hours grace period suffices to accommodate the potential situations raised by petitioners, particularly considering the frequency of intermittent venting or accessibility of some sites. (Question III.7b)

e. Temporary Control Devices and Backup Control Devices

Background. Under the March 2024 Final Rule, the EPA regulates temporary and backup equipment in the same manner as permanently installed equipment that operates on a regular basis. Petitioners requested that the EPA exempt temporary control devices (TCDs) from the monitoring and performance testing requirements of the March 2024 Final Rule, because, given the short duration of their use, compliance is impracticable, if not impossible.²²⁸ One petitioner provided liquids unloading as an example, noting that the ongoing compliance assurance requirements related to both a CVS and control device do not appropriately apply to liquids unloading operations. Petitioners state that because liquids unloading events occur intermittently, many of the required monitoring would take place while no liquids unloading activities occur.²²⁹ Therefore, the petitioner asserted that the EPA should authorize the use of a temporary flare or portable control device to handle the emissions from liquids unloading events without stringent monitoring and recording requirements. Due to the temporary nature of these activities, the petitioner requested that the EPA mimic the requirements of control devices utilized for well completion affected facilities for any intermittent activities (e.g., emergencies, routine maintenance, liquids unloading events, and blowdowns). In addition, petitioners expressed concerns regarding testing requirements for TCDs when the devices do not stay on-site long enough to meet the minimum testing durations. Petitioners used the 14-day NHV alternate sampling requirement as an example of an instance where the TCD may not remain on site long enough to meet the minimum testing duration.

Petitioners further asked the EPA to exempt backup control devices (BCDs) from monitoring and recordkeeping provisions. Petitioners defined BCDs as auxiliary and stationary control devices that are mostly used when a control device malfunctions or is out of service for maintenance. Because of their infrequent use, petitioners claimed

difficulty in meeting prescribed testing and other compliance requirements. Petitioners asked the EPA to allow for exemptions up to 90 days per year per site for BCDs.

Summary of Proposed Changes and Rationale. Under the March 2024 Final Rule, temporary equipment is regulated in the same manner as permanently installed equipment that operates on a regular basis. The EPA agrees with the petitioner's assertion that TCDs should be exempted from some monitoring and performance testing requirements during intermittent activities, mainly due to the relatively short and unpredictable time the TCD could be on-site (which renders a permanently installed monitoring device such as a gas chromatograph or a 14-day sampling window infeasible for both sampling and scheduling purposes), coupled with the fact that these devices are typically rented from vendors not subject to the same air permit requirements as the facility itself. The EPA agrees that the rule's equal treatment of temporary and permanent devices creates practical burdens, because temporary devices (1) currently must maintain the same documentation, monitoring, and reporting as permanent devices, (2) are routinely moved, rented, or deployed quickly for short-term operational scenarios not conducive to stable monitoring, (3) often lack the integrated infrastructure and continuous monitoring systems of permanent units, and (4) must demonstrate destruction efficiency and proper operation under highly variable conditions and compressed timelines. These issues together explain why temporary control devices face disproportionate difficulty demonstrating compliance, even though the regulatory requirements themselves do not change with regards to temporary versus permanent control device use. Hence, the EPA agrees with the petitioner's assertions on the need for additional flexibility to be able to use mobile or quickly installable equipment when necessary.

Currently, some States have already set a precedent and offer exemptions for TCDs, with the duration of the exemptions centering around 30 days per year per site. For instance, the State of Texas allows for 480 hours (20 days) of exemptions per year from monitoring and record keeping for temporary control devices.²³⁰ Industry

stakeholders noted that most intermittent activities get resolved within 30 days. Hence, when an owner or operator uses a TCD, it usually is not on site for more than 30 days. As described above, this short timeframe makes it difficult for the owners or operators who use the TCD to comply with the monitoring and performance testing requirements of the March 2024 Final Rule. Moreover, based on industry feedback, some emergencies or other unanticipated scenarios can necessitate the use of TCDs beyond 30 days.²³¹

Therefore, the EPA proposes to exempt temporary control devices that are used for 30 operational days or less per site per year (on a 12-month rolling basis) from the NHV monitoring and performance testing requirements in the March 2024 final Rule. However, temporary control devices used for 30 operational days or less per site per year, on a 12-month rolling basis, must maintain certain records, including (1) performance certification documentation from the device manufacturer or rental vendor verifying that the flare can meet the required destruction efficiency of 95.0 percent for methane and VOC emissions, (2) make, model, and type of rental or temporary equipment (e.g., trailer-mounted, skid-mounted, etc.), (3) location, date, and duration of operation of the device in hours, including start and stop time for each day of operation, (4) the volume of gas flared or vented, (5) documentation that the pilot flame is active at all times of operation of the device, (6) the specific reasons for the use of the temporary control device in lieu of capture or combustion, (7) the equipment rental agreement, and (8) documentation of whether or not a temporary process controller was used as part of the temporary control device configuration.

The EPA is also proposing that thereafter owners and operators can have an additional extension of the exemptions up to 60 additional operational days per site per year (on a 12-month rolling basis). For this additional extension period, the EPA proposes to require additional recordkeeping.²³² More specifically, for temporary control devices used for 90 operational days or less and greater than 30 operational days per site per year, on a 12-month rolling basis, the same

²³⁰ TCEQ (2012). Oil and Gas Easy to Read 106.352; § 106.352. Oil and Gas Handling and Production Facilities (Rev. 02/12). Table 8: Monitoring and Records Demonstrations (pp. 60–68). <https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/oilgas/og-easy-2012.pdf>.

²³¹ API–AXPC TCD Meeting Notes (August 4, 2025).

²³² Under this provision, there would be no limit to the number of TCDs that could be used per site, provided that the total number of days does not exceed 90 operational days per year (e.g., one TCD used for 90 days, ten TCDs used for 9 days each, etc.).

²²⁸ API & AXPC (2024b).

²²⁹ API & AXPC (2024a).

recordkeeping requirements previously summarized would still apply, along with gas composition data (including the net heating value) from a single grab sample for every 30 days of operation and documentation of equipment inspections and maintenance activities, including those prescribed by the manufacturer of the temporary control device. After 90 operational days of use, the TCD would then be subject to the same requirements as a permanently installed device at the facility would be. These proposed changes would impact NSPS OOOOb (40 CFR 60.5413b(a), 40 CFR 60.5415b(f), 40 CFR 60.5417b(b), and 40 CFR 60.5420b(c)) and EG OOOOc (40 CFR 60.5413c(a), 40 CFR 60.5415c(e), 40 CFR 60.5417c(b), and 40 CFR 60.5420c(c)).

In this proposed rule, the EPA proposes to define temporary control devices as control devices that are either mobile (whether on wheels, trucks, railcars, barges, ships, *etc.*) or skid mounted. This definition is modeled after the definition set by the State of Texas for TCDs.²³³ Based on information provided by reconsideration petitioners, the EPA concluded, for the purposes of this proposal, that TCDs and stationary control devices had no other functional differences other than the aforementioned criterion.²³⁴ Therefore, the EPA finds the performance of TCDs at controlling emissions as comparable to the performance of stationary control devices. Put another way, TCDs must still comply with the requirement in the March 2024 final Rule to reduce emissions that are routed to the TCD by 95.0 percent. The EPA's proposed changes for TCDs only relate to certain monitoring provisions.

Summary of Comment Solicitation. The EPA acknowledges the petitioner's request to also exempt BCDs from the monitoring and performance testing provisions. While the EPA understands the need to exempt TCDs to address emergencies and other intermittent activities, the Agency has not received sufficient information to propose exempting BCDs. Specifically, the EPA lacks clarity on how BCDs differ from stationary control devices in a way that would warrant such a change. Moreover, the EPA understands that an

air permit includes a BCD and lists BCDs as permitted equipment, along with the other permanent, stationary equipment and emission sources located at the facility. Unlike BCDs, the EPA understands that operators use TCDs on a temporary and situational ad hoc basis. Additionally, the EPA has not received sufficient information on the incidence of use or the number of BCDs across the industry.

Therefore, the EPA solicits comment on the use of BCDs, specifically on how BCDs differ from the permanently installed control devices operating at a given facility. The EPA additionally requests information on the incidence of use and the number of BCDs across the industry. The EPA also solicits comment on how to define BCDs, so as to not inadvertently incentivize their use over permanently installed control devices. (Question III.7c)

f. Temporary Process Controllers

Background. Reconsideration petitioners highlighted that while permanent equipment runs routine production after flowback, oil and gas sites routinely rely on short-term equipment such as temporary process controllers (TPCs) to fulfill specific purposes during intermittent operations. Petitioners provided several examples (*e.g.*, temporary fuel conditioning skids, small compressor injection, and liquids unloading events) that require the usage of TPCs. For these scenarios, petitioners requested that the EPA exempt TPCs from the zero-emissions standards prescribed by the March 2024 Final Rule. Petitioners cited several reasons to provide relief for these devices, including the economic burden of retrofitting a handful of TPCs for minimal incremental emissions benefit, the risk of triggering a modification when bringing TPCs on site, and operational challenges with zero-emitting controllers when the necessary infrastructure is not yet in place.

Petitioners classified the intermittent usage of TPCs into two main scenarios: (1) embedded into TCD/BCDs and (2) used during the construction phase at a given facility (*e.g.*, drilling or well completions). For the scenario of embedment into TCD/BCDs, petitioners claimed that third parties often lease or own TPCs, thereby limiting the inventory of devices able to "plug in" to the site's permanent design. Moreover, petitioners stated that the March 2024 Final Rule is prohibitive in these scenarios since natural-gas-driven TPCs that permanently attach to TCD/BCDs could trigger modification without significant capital spending or planning if brought on site. Furthermore,

petitioners claimed difficulty in retrofitting natural-gas-driven TPCs to comply with the zero-emission standards in a relatively short amount of time, without significant financial investment, for equipment that owners and operators might not directly own.²³⁵

For the scenario of usage during the construction phase at a given facility, petitioners claimed that facilities readily use TPCs during this scenario. Even if a site intends on using low emitting process controllers during normal operations, the site may not have electricity or compressed air available to power the actuation of these devices. As such, sites may use TPCs in the interim to continue the construction of the site. Petitioners asked the EPA to exempt process controllers used during the construction phase of a site to provide relief.

Summary of Proposed Changes and Rationale. After further review and consideration of the petitions regarding TPCs embedded into TCDs, the EPA acknowledges that, while TPCs are not always needed as part of a TCD configuration, TPCs are nevertheless frequently attached to TCDs for certain phases of operation. The EPA also finds the petitioners' concerns legitimate in that temporary equipment cannot plug into permanent site utilities (*e.g.*, instrument air or electrical systems), which are designed only for permanent equipment. Retrofitting rented equipment that the facility does not own is also likely not allowed by the rental company per the rental agreement, along with being considered impractical and uneconomical. Moreover, certain site construction and flowback phases lack the necessary infrastructure to support zero emission controllers (where zero-emission infrastructure is often not present during construction, drilling, or flowback), temporary equipment is on-site only briefly, and the compliance requirements in the March 2024 Final Rule were designed under a framework for permanent, and not transient, devices.

As such, the EPA proposes to revise the requirements in NSPS OOOOb, and the presumptive standards in EG OOOOc, for process controllers that are embedded to TCDs for intermittent activities. These proposed changes entail treating process controllers that are permanently embedded into TCDs differently. The proposed changes will still allow these process controllers to comply with the zero-emission standard but will also provide an alternate "low bleed" standard for up to 30 operational days per site per year (on a 12-month

²³³ TCEQ Control Device Requirement Charts for Oil and Gas Handling and Production Facilities. <https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/oilgas/og-easy-2012.pdf>.

²³⁴ API (2025). Re: Request for Administrative Reconsideration of EPA's Final Rule "New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities"—NSPS OOOObc. September 12, 2025.

²³⁵ API (2025).

rolling basis), with associated recordkeeping. This “low bleed” standard takes after provisions introduced in the March 2024 final rule for process controllers in Alaska with natural gas-driven continuous bleed that lack access to power because of the site’s limited infrastructure and remoteness. In these provisions, the low-bleed process controllers allow for no greater than 6 scfh in bleed rate.²³⁶ The EPA proposes that following 30 operational days, a site may continue to comply with the alternate “low bleed” standard for these process controllers up to 60 additional operational days per site per year (on a 12-month rolling basis), with additional recordkeeping as described in section III.H.1.e. of this preamble. These proposed changes impact NSPS OOOOb (40 CFR 60.5390b(b)) and EG OOOOc (40 CFR 60.5394c(b)).

The March 2024 Final Rule also includes a yet to be fully “phased in” zero-emitting standard for process controllers that did not take into account process controllers used at a particular site for a limited amount of time, before removal from the site. Operators can comply by using multiple options, including using electricity- or compressed air-powered devices, instead of natural gas. Because TPCs are usually rented, owners and operators find it difficult to locate controllers that are compatible with the large variety of site designs. While some sites may have electricity from the power grid or air compressors already on site, remote locations or other certain locations often do not. To address this issue, TPC rental companies need to have varied TPC types at the ready to “plug-in” to sites with potentially different emission control requirements. Logistically, it may be difficult to maintain an inventory of multiple TPC types, particularly when multiple owners and operators in a region require the same type of TPC at the same time.

Moreover, there may also be emergency situations where owners and operators will need to use TCD/BCDs that are permanently attached to natural-gas-driven process controllers. In these cases, the facility would need to retrofit and potentially modify equipment they do not own to meet the zero-emitting provisions or risk being out of compliance. Given the urgency in response, these modifications could increase the site’s response time or lead to unnecessary venting. Therefore, the EPA proposes to provide alternate compliance standards from the zero-

emitting provisions for TPCs embedded to TCDs.

Summary of Comment Solicitation. The EPA agrees with petitioners that standalone TPCs used during the construction phase of an oil and gas site fundamentally differ from TPCs embedded into TCDs. While both devices function similarly, standalone TPCs used during the construction phase can connect to transient machinery that normal well operation does not require. Thus, the number of standalone TPCs on site during the construction phase may vary substantially during this time. The EPA has not received sufficient information on the number of standalone TPCs used for the construction phase of a well, or the average number of days of having these devices on site. Thus, the EPA proposes no changes for standalone TPCs that are not embedded into TCDs. The EPA invites comment on the incidence of standalone TPCs present during the construction phase of a well and what the alternate standard from the zero-emitting provisions in the March 2024 Final Rule for these devices should be, along with providing any supporting information that the EPA can consider regarding TPCs that are not utilized as part of a TCD configuration. (Question III.7d)

g. Control Device Categories

Background. The March 2024 Final Rule outlines different operating and monitoring requirements based on the type of control device but does not provide definitions for the various control device categories. Petitioners stated that without clear definitions, operators and vendors may be confused about which set of requirements apply to a particular control device.²³⁷ For example, NSPS OOOOb currently prescribes different requirements for air-assisted flares or enclosed combustion devices that use either perimeter assist air or premix assist air, and subsequently whether you must calculate NHV_{dl} or NHV_{cz} (which use different equations).²³⁸ Therefore, petitioners requested that the EPA clarify the control device requirements by including the following seven definitions from NESHAP subpart CC for Petroleum Refineries²³⁹ in NSPS OOOOb.

Assist air means all air that intentionally is introduced prior to or at a flare tip through nozzles or other hardware conveyance for the

purposes including, but not limited to, protecting the design of the flare tip, promoting turbulence for mixing or inducing air into the flame. *Assist air* includes premix assist air and perimeter assist air. *Assist air* does not include the surrounding ambient air.

Assist steam means all steam that intentionally is introduced prior to or at a flare tip through nozzles or other hardware conveyance for the purposes including, but not limited to, protecting the design of the flare tip, promoting turbulence for mixing or inducing air into the flame. *Assist steam* includes, but is not necessarily limited to, center steam, lower steam and upper steam.

Center steam means the portion of assist steam introduced into the stack of a flare to reduce burnback.

Lower steam means the portion of assist steam piped to an exterior annular ring near the lower part of a flare tip, which then flows through tubes to the flare tip, and ultimately exits the tubes at the flare tip.

Perimeter assist air means the portion of assist air introduced at the perimeter of the flare tip or above the flare tip. *Perimeter assist air* includes air intentionally entrained in lower and upper steam. *Perimeter assist air* includes all assist air except premix assist air.

Premix assist air means the portion of assist air that is introduced to the flare vent gas, whether injected or induced, prior to the flare tip. *Premix assist air* also includes any air intentionally entrained in center steam.

Upper steam means the portion of assist steam introduced via nozzles located on the exterior perimeter of the upper end of the flare tip.

Summary of Proposed Changes and Rationale. The EPA agrees with the petitioners on the need for clarity regarding the control device requirements, because the March 2024 Final Rule has different requirements depending on the type of control device. Therefore, the EPA is proposing to include these definitions from NESHAP subpart CC in NSPS OOOOb. The EPA solicits comment on proposing to add these definitions to NSPS OOOOb (40 CFR 60.5430b) for clarity. (Question III.7e)

h. Other Test Method 52A (OTM–52A)

Background. The EPA is aware from petitioner requests²⁴⁰ that NSPS OOOOb affected sources are interested in the use of alternative testing approaches and methods to demonstrate compliance with the standards for ECDs. In addition to the prescribed methods already included in the NSPS OOOOb (and EG OOOOc) rule, petitioners have requested the EPA to add Other Test Method 52A (OTM–52A)²⁴¹ as an allowable test method

²³⁷ API & AXPC (2024a); and API & AXPC (2024b).

²³⁸ 40 CFR 60.5417b(d)(8)(iv)(D)–(F) and 40 CFR 60.5417b(d)(8)(vi)(A).

²³⁹ 40 CFR 63.641.

²⁴⁰ API & AXPC (2024a), API & AXPC (2024b), and API (2025).

²⁴¹ Other Test Method 52A (OTM–52A) Method for Determination of Combustion Efficiency from

option to satisfy compliance with the ECD standards.

The EPA notes that one approach for using OTM–52A already exists. As indicated in ONG Reconsideration #1,²⁴² if a source wants to use an alternative method (such as OTM–52A) to demonstrate compliance with an alternative combustion efficiency standard, the owner or operator may follow the procedures in 40 CFR 60.5412b(d) to request approval of an alternative test method. The EPA also notes that the current stack testing requirements for NSPS OOOOb (and EG OOOOc) sources are based upon total organic compound (TOC) removal efficiency (*i.e.*, TOC in versus TOC out), whereas OTM–52A is based upon TOC combustion efficiency (*i.e.*, hydrocarbon-to-CO₂ conversion). These represent two separate and distinct approaches for demonstrating compliance with the prescribed TOC limits. While the EPA has allowed for an alternative combustion efficiency standard for ECDs in 40 CFR 60.5412b(d), there is concern that the provisions may not be written in a manner that clearly allows for the use of an alternative method, such as OTM–52A. Any petition requesting approval to use OTM–52A as a potential alternative test method (as described above) would have to address this key difference.

Summary of Comment Solicitation. The EPA is soliciting comment on the practical use of a method based on OTM–52A for demonstrating compliance with the NSPS OOOOb stack testing requirements for enclosed combustion devices. Specifically, the EPA seeks feedback on field applicability, data quality, and implementation feasibility of using a combustion-efficiency-based method in lieu of traditional removal efficiency approaches. The EPA also requests general comments on the OTM–52A method, including but not limited to, test duration, procedures, and QA/QC. In addition, the Agency is requesting comment on whether the provisions for alternative test methods in 40 CFR 60.5412b(d) would prevent the use of a combustion efficiency method such as OTM–52A, and whether different performance testing requirements should be considered for enclosed combustion devices that operate intermittently. (Question III.7f) The EPA is also taking comment on whether the

Agency should specifically allow, by rule, the use of OTM–52A, at least until the EPE develops its own official version (*i.e.*, EPA Method “XX”). Beyond the broad question of whether OTM–52A (or a method based on OTM–52A) should be allowed, the EPA is seeking input on any specific considerations related to how the alternative could be incorporated, and whether it would require any other changes (such as an alternative compliance limit) to demonstrate any differences between a testing approach on removal efficiency vs combustion efficiency, and specifically what those changes should be. (Question III.7g)

I. Equipment Leaks at Gas Plants

1. Background

Under the March 2024 Final Rule, the NSPS OOOOb standards and the OOOOc EG (presumptive standards) apply to the “process unit equipment” affected and designated facilities and require that, for each piece of equipment that has the potential to emit methane or VOC (methane only for designated facilities), owners and operators conduct bimonthly (*i.e.*, once every other month) OGI monitoring in accordance with 40 CFR part 60, Appendix K to detect equipment leaks from pumps in light liquid service, pressure relief devices in gas/vapor service, valves in gas/vapor or light liquid service, connectors in gas/vapor or light liquid service, and CVSSs. As an alternative to the bimonthly OGI monitoring, facilities may use EPA Method 21 to detect leaks from the same equipment at frequencies specific to the process unit equipment type (*e.g.*, monthly for pumps, quarterly for valves). Facilities must use AVO to monitor open-ended valves and lines, pumps, valves and connectors in heavy liquid service, and pressure relief devices in light liquid or heavy liquid service. The March 2024 Final Rule, including the presumptive standards, requires that a facility must repair a leak after its detection. Facilities must repair valves by replacing the leaking valve with a low emission (low-E) valve, where technically feasible. The March 2024 Final Rule also requires that facilities must tag the leaking equipment for identification, commence a first attempt at repair for all identified leaks within 5 days after detection, and complete final repair within 15 days after detection (unless the delay-of-repair provisions apply). The EPA allows delay of repair where it is technically infeasible to complete repairs within 15 days without a process unit shutdown. In addition to the

monitoring and repair requirements, the March 2024 Final Rule includes other equipment and monitoring requirements for specific types of equipment (*e.g.*, an open-ended valve or line must be equipped with a closure device).

Under the March 2024 Final Rule, the EPA requires semiannual reporting for process unit equipment affected facilities. Inspection records required in the March 2024 Final Rule consist of:

- Equipment identification
- Date of inspection
- Start and end times of inspection
- Inspector name
- Leak determination method
- Monitoring instrument identification
- Type of equipment monitored
- Process unit identification
- Appendix K records (where applicable)
- EPA Method 21 instrument readings and calibration results (where applicable)
- For visual inspections, the date, name of inspector, and result of inspection

2. Additional Background and Summary of Proposed Changes and Rationale

Petitioners raised two issues with the requirements in the March 2024 Final Rule for equipment leaks at natural gas processing plants.²⁴³

The first issue raised by petitioners involves a request for the EPA to reconsider the March 2024 Final Rule low-E valve repair requirements. Petitioners requested revisions to the provisions to allow for a first repair attempt using other, less costly actions such as those found in NSPSs KKK, OOOO, and OOOOa. Petitioners contended that without this first attempt at repair allowance, additional emissions could result from process unit shutdowns and/or piping blowdowns that a low-E repair may require.²⁴⁴

The second issue raised by petitioners involves a request that the EPA reconsider the elimination of the applicability threshold of 10 percent VOC by weight and that the EPA add a threshold of 1 percent methane by weight in order to limit the number of additional components with low or no concentrations of the regulated pollutant from tagging and monitoring.

Sections III.I.2.a and b of this preamble provide the petitioners’ concerns and supporting information, summary of proposed changes, and basis for proposed changes for both of these issues.

a. Low-E Valve Repair Requirements

Background. Petitioners raised concerns with the March 2024 Final

Enclosed Combustion Devices Located at Oil and Natural Gas Facilities Using Method 25A (June 26, 2025) at https://www.epa.gov/system/files/documents/2025-07/otm-52a_07142025.pdf.

²⁴² 91 FR 18064 (April 9, 2026).

²⁴³ API & AXPC (2024b).

²⁴⁴ API & AXPC (2024b), pg. 25.

Rule requirement that leaking valves at natural gas processing plants be repaired with low-E packing or replaced with low-E valves unless demonstrated to be technically infeasible.^{245 246}

Petitioners requested that the low-E valve repair requirements be revised to allow for a first repair attempt using other, less costly actions such as those found in NSPS KKK, OOOO, and OOOOa, which include:

- Tightening of bonnet bolts;
- Replacement of bonnet bolts;
- Tightening of packing gland nuts;

and
 • Injection of lubricant into lubricated packing.

Petitioners explained that most leaks can be repaired using these first repair attempt actions and expressed concern that eliminating these first repair attempt actions and requiring a low-E repair would create environmental disbenefits. Specifically, they noted that additional emissions could result from process unit shutdowns and/or piping blowdowns that may be required for a low-E repair. Petitioners recommended that the EPA revise the March 2024 Final Rule to allow these first repair attempt actions instead of a low-E valve repair or at a minimum before requiring a low-E valve repair.

Petitioners asserted that the March 2024 Final Rule inaccurately characterized low-E valves and packing as having no additional costs compared to traditional valves and packing. In their experience, low-E valves and packing are more expensive. They stated that they were not able to provide cost information or comments on this issue prior to the March 2024 Final Rule because the low-E valve repair requirements were not included in the November 2021 Proposal or December 2022 Supplemental Proposal. Consequently, they requested administrative reconsideration of the low-E valve repair requirements.

Summary of Proposed Changes and Rationale. Petitioners²⁴⁷ are correct that the low-E valve repair requirements that the EPA finalized in 2024 were not included in the November 2021 Proposal or December 2022 Supplemental Proposal. In the November 2021 Proposal, the EPA proposed repair requirements for leaking equipment. In the November 2021 Proposal, the EPA proposed that the definition of “repaired” (for equipment) included that the equipment

be adjusted, replaced, or otherwise altered, in order to eliminate equipment leaks and that the equipment be re-monitored to verify that emissions from the equipment are below the leak definition.²⁴⁸ The EPA explained at that time that valve repairs can include replacement with low-E valves, valve packing, or drill-and-tap with a low-E injectable (“low-E equipment”) but the Agency did not require replacement with low-E equipment. The EPA explained that low-E equipment meets the specifications of the American Petroleum Institute (API) 622 or API 624 and typically includes a manufacturer written warranty or a performance guarantee that it will not emit fugitive emissions at a concentration greater than 100 ppmv during the first 5 years.²⁴⁹ In the December 2022 Supplemental Proposal, the EPA proposed a definition of “repaired” (for equipment) consistent with that discussed in the November 2021 Proposal. The EPA did not propose to require the replacement of leaking valves with low-E equipment, noting that the technology is not appropriate for all repairs, but reiterated the position from the November 2021 Proposal that due to the performance expectations, low-E equipment can be a viable option for valve repair.²⁵⁰

The EPA received comments on the December 2022 Supplemental Proposal that urged the Agency to require replacement of leaking equipment with low-E valves. One commenter cited a recent rulemaking, where Colorado found these options to be similar in cost to non-low-E valves and packing and directed operators to consider them.^{251 252} The commenter also noted that some manufacturers claimed that their low-E packing can reduce emissions of harmful gases by up to 95.0 percent versus valves with traditional packing, with minimal cost impacts.

The EPA responded to these comments on the December 2022 Supplemental Proposal by stating that the commenter’s understanding of the cost for low-E equipment aligns with

that of the EPA in that they are similar in cost to non-low-E equipment. Therefore, the EPA concluded that replacing leaking valves with low-E equipment would result in lower emissions with no additional cost burden (compared to using non-low-E equipment). As such, the final standard in NSPS OOOOb, and the presumptive standard in EG OOOOc, requires replacing leaking valves with low-E valves or repacking existing valves with low-E packing, except where it is not technically feasible. If delay of repair is required to repack or replace the valve, the final rule allows the use of the delay of repair requirements provisionally, but an owner or operator would not be able to delay valve repair or replacement beyond the next process unit shutdown. The EPA specifically allowed for delay of repair in the March 2024 Final Rule to repack or replace a valve to avoid the need for an owner or operator to shutdown a process unit or conduct a piping blowdown that would result in additional emissions to implement low-E valve repacking or replacement.

The EPA is now proposing to change its position on this matter, compared to the March 2024 Final Rule. The Agency still believes that the costs for low-E equipment can be similar to the costs for non-low-E equipment, especially when taking into consideration the total cost of ownership (e.g., cost savings from less product loss, less compliance and penalty risks). However, some estimates indicate that the upfront costs of a low-E valve can be 25 percent more than the upfront costs for a non-low-E valve, and the EPA acknowledges that there may be even greater upfront cost differences for some low-E valves (depending on the level of automation and valve functionality and temperature and pressure conditions).²⁵³ The EPA solicits low-E valve versus non-low-E valve cost information. (Question III.8a) A “low-E valve” under NSPS OOOOb and the presumptive standard in EG OOOOc, is differentiated from a “non-low-E valve” in that a “low-E” valve is a valve (including its specific packing assembly) for which the manufacturer has issued a written warranty or performance guarantee that it will not emit fugitives at greater than 100 ppm in the first five years. A valve may qualify as a low-E valve if it is as an extension of another valve that has qualified as a low-E valve.

Recognizing that an owner or operator may be able to repair a leaking valve by using less-costly first attempts at repair

²⁴⁵ API & AXPC (2024b).

²⁴⁶ 40 CFR 60.5400b(h)(2)(ii) and 60.5401b(i)(2)(ii), and 40 CFR 60.5400c(h)(2)(ii) and 60.5401c(i)(2)(ii).

²⁴⁷ API & AXPC (2024b).

²⁴⁸ 86 FR 63182 (November 15, 2021).

²⁴⁹ 86 FR 63182 (November 15, 2021).

²⁵⁰ 87 FR 74808 (December 6, 2022).

²⁵¹ EDF, et al. (2023). Public Comment Submission on EPA’s December 2022 Supplemental Proposal. Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Docket Document ID No. EPA–HQ–OAR–2021–0317–2433.

²⁵² See Colorado Department of Public Health and Environment Air Quality Control Commission. Regulation Number 7. Control of Emissions From Oil and Gas Emissions Operations. 5 CCR 1001–9. Part C. Statements of Basis, Specific Statutory Authority and Purpose. (Leak Detection and Repair: Sections II.E. and II.I.). December 17, 2021.

²⁵³ International Society of Automation (ISA). (2014). Low-Leak Valve Technology. An Update. Slide Presentation. March 18, 2014.

approaches similar to what is allowed for other equipment components, such as tightening or replacement of bonnet bolts, tightening of packing gland nuts, or injection of lubricant into lubricant packing, the EPA agrees that allowing such first attempts at repair is reasonable. As such, the EPA proposes to amend the March 2024 Final Rule to allow owners and operators to conduct a “first attempt at repair” of a leaking valve as defined in 40 CFR 60.5430b and 60.5430c prior to being required to utilize a low-E valve or low-E packing to replace or repack a leaking valve. Under 40 CFR 60.5430b and 60.5430c,

[first attempt at repair means, for the purposes of fugitive emissions components, an action taken for the purpose of stopping or reducing fugitive emissions to the atmosphere. First attempts at repair include, but are not limited to, the following practices where practicable and appropriate: Tightening bonnet bolts; replacing bonnet bolts; tightening packing gland nuts; or injecting lubricant into lubricated packing.

For purposes of equipment leaks at gas plants, the EPA proposes to revise the “first attempt at repair” definition in 40 CFR 60.5430b and 60.5430c to clarify that, “for the purposes of fugitives emissions components and equipment leaks at gas plants,” a first attempt at repair is allowed for both fugitive emissions components and equipment leaks at gas plants. This proposed change to the definition is consistent with our proposal to allow for a first attempt at repair prior to requiring owners and operators to utilize a low-E valve or low-E packing to replace or repack a leaking valve at a gas plant. If the first attempt at repair is unsuccessful (*i.e.*, does not eliminate the leak), the EPA proposes that owners or operators must utilize a low-E valve or low-E packing to replace or repack the leaking valve where technically feasible.²⁵⁴ These proposed changes impact both NSPS OOOOb (40 CFR 60.5400b(h)(2)(ii)) and the presumptive standard in the model rule for EG OOOOc (40 CFR 60.5400c(h)(2)(ii)). The EPA believes that this proposal maintains the Agency’s goal of mitigating emissions from leaking valves and packing by allowing quick, practical, low-cost mitigation options, such as tightening bolts as a first attempt at repair, while still resulting in

a transition to low-E valves/low-E packing in cases where the initial repair is unsuccessful. This revision mitigates any potential additional costs that would be incurred by having to replace an existing non-low-E valve with a low-E valve where, for example, a simple tightening or replacement of bonnet bolts, tightening of packing gland nuts, or injection of lubricant into lubricant packing can result in an elimination of the leak. The EPA solicits comment on this proposed change. (Question III.8b)

b. De Minimis VOC or Methane Applicability Threshold

Background. Petitioners requested that the EPA retain the applicability threshold of 10 percent VOC by weight and add a threshold of 1 percent methane by weight to limit the number of additional components with low or no concentrations of the regulated pollutant from monitoring.²⁵⁵ They explained that LDAR at natural gas processing plants has a long history of applying only to specific components in VOC service with the following language included in NSPS KKK,²⁵⁶ NSPS OOOO,²⁵⁷ and NSPS OOOOa:²⁵⁸

Each piece of equipment is presumed to be in VOC service or in wet gas service unless an owner or operator demonstrates that the piece of equipment is not in VOC service or in wet gas service. For a piece of equipment to be considered not in VOC service, it must be determined that the VOC content can be reasonably expected never to exceed 10.0 percent by weight. For a piece of equipment to be considered in wet gas service, it must be determined that it contains or contacts the field gas before the extraction step in the process. For purposes of determining the percent VOC content of the process fluid that is contained in or contacts a piece of equipment, procedures that conform to the methods described in ASTM E169–93, E168–92, or E260–96 (incorporated by reference as specified in 40 CFR 60.17) must be used.

Petitioners asserted the importance of these distinctions within a gas plant as the EPA does not subject many components to LDAR requirements. The LDAR requirements may not apply to a given component if the equipment’s location within the gas plant does not exceed a VOC content of 10 percent by weight and the equipment has never previously been tagged or incorporated into the fugitive monitoring on process units subject to NSPS KKK, NSPS OOOO, or NSPS OOOOa. Petitioners

explained that many gas plants still have permit conditions that require the use of EPA Method 21 instead of OGI to screen for fugitive leaks on process units. For these facilities, they report that all applicable components must be tagged, and that removing the exemption criteria that establish a de minimis threshold results in the need for operators to tag every component at the gas plant. Petitioners argued that operators having to tag each component for monitoring poses a significant undertaking due to the high number of fugitive components located at a gas processing plant.

In the 2016 NSPS OOOOa, the EPA added GHG (methane) to the regulations for equipment leaks at onshore natural gas plants but continued to rely on the requirements in NSPS VVa, which limited monitoring and repair (if found leaking) to those equipment components “in VOC service.”²⁵⁹ In the November 2021 Proposal, the EPA proposed to revise the equipment leak standards for onshore natural gas plants to more readily apply to equipment components that have the potential to emit methane even though they are not “in VOC service.”²⁶⁰ In the December 2022 Supplemental Proposal, consistent with the November 2021 proposal, the EPA proposed to apply the LDAR standards to process unit equipment that has the potential to emit methane or VOC.²⁶¹ The EPA proposed that each piece of equipment is presumed to have the potential to emit methane or VOC unless an owner or operator demonstrates that the piece of equipment does not have the potential to emit methane or VOC. For a piece of equipment to be considered not to have the potential to emit methane or VOC, the owner or operator would need to demonstrate that the process fluids in contact with the process unit equipment do not contain either methane or VOC. Under the March 2024 Final Rule NSPS OOOOb and EG OOOOc:²⁶²

Each piece of equipment is presumed to have the potential to emit methane or VOC unless an owner or operator demonstrates that the piece of equipment does not have the potential to emit methane or VOC. For a piece of equipment to be considered not to have the potential to emit methane or VOC, the methane and VOC content of a gaseous stream must be below detection limits using Method 18 of appendix A–6 to this part. Alternatively, if the piece of equipment is in wet gas service, you may choose to determine the methane and VOC content of the stream

²⁵⁴ Repaired, for the purposes of process unit equipment affected/designated facilities, specifically valves, means that equipment is adjusted, or otherwise altered, in order to eliminate a leak as defined in 40 CFR 60.5400b/c and 60.5401b/c and is re-monitored as specified in 40 CFR 60.5400b/c(b) introductory text or 40 CFR 60.5403b/60.5406c, respectively, to verify that emissions from the equipment are below the applicable leak definition.

²⁵⁵ API–AXPC (2024b). Re: Request for Administrative Reconsideration of EPA’s Final Rule “New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.” May 6, 2024. pgs. 26–27.

²⁵⁶ 40 CFR 60.632(f).

²⁵⁷ 40 CFR 60.5400(f).

²⁵⁸ 40 CFR 60.5400a(f).

²⁵⁹ 81 FR 35824 (June 3, 2016).

²⁶⁰ 86 FR 63231 (November 15, 2021).

²⁶¹ 87 FR 74808 (December 6, 2022).

²⁶² 40 CFR 60.5400b(a)(2), 60.5401b(a)(2), 60.5400c(a)(1), and 60.5401c(a)(1).

is below the detection limit of the methods described in ASTM E168–16(R2023), E169–16(R2022), or E260–96 [all incorporated by reference, see 40 CFR 60.17]. [Note: VOC is not included for EG OOOOc citations.]

According to the petitioners, some streams at gas processing plants contain methane or VOCs in such low concentrations that monitoring would nearly always result in no detected emissions, rendering the monitoring obsolete. Examples of such streams provided by the petitioners include but are not limited to pure ethane, acid gas streams (*i.e.*, hydrogen sulfide (H₂S)), and ancillary chemicals. By requiring EPA Method 18 monitoring of additional components that they have not previously had to monitor with no appreciable amounts of VOC or methane, petitioners reported that there would be an added cost that uses personnel resources with minimal, if any, environmental benefit. Petitioners also noted that many gas plants still have permit conditions that require the use of EPA Method 21 instead of OGI to screen for fugitive leaks on process units. For these permitted facilities, operators must tag all applicable components. As such, by removing the exemption criteria based on a de minimis threshold, operators must tag every component at the gas plant.

To address their concerns, petitioners requested that the EPA retain the applicability threshold of 10 percent VOC by weight and that the Agency add a threshold of 1 percent methane by weight to limit the number of additional components with low or no concentrations of the regulated pollutant from monitoring.

Summary of Proposed Changes and Rationale. The EPA acknowledges the petitioners' concerns that gas processing plants may contain some streams with methane or VOC in low concentrations. Commenters on the NSPS and EG December 2022 Supplemental Proposal had similarly requested that the EPA maintain the 10 percent by weight VOC concentration threshold and add a 1 percent by weight methane concentration threshold to exclude ethane product streams, produced water streams, and wastewater streams.²⁶³ At that time, the EPA noted that no additional data were provided to indicate that a threshold of 1 percent by weight methane would be appropriate. The EPA also noted that studies indicated that produced water and wastewater streams can be significant sources of VOC emissions.²⁶⁴ Therefore,

the EPA maintained that equipment monitoring applicability based on the potential to emit VOC or methane was appropriate.

Petitioners on the March 2024 Final Rule raised as they had previously in their comments on the proposed rule, concerns that some streams at gas processing plants contain methane or VOC in such low concentrations that facilities almost always receive monitoring results of no detected emissions, rendering monitoring obsolete. However, petitioners provided information that such streams also include, but are not limited to pure ethane, acid gas streams (*i.e.*, H₂S), and ancillary chemicals. The EPA maintains that produced water and wastewater streams, as it did in the final rule preamble, can be significant sources of VOC emissions. However, the EPA acknowledges that some of the natural gas processing streams highlighted by the petitioners (*i.e.*, pure ethane, acid gas streams (*i.e.*, H₂S)) support their concerns. Pure ethane and acid gas streams would not contain appreciable, if any, VOC or methane. The EPA also recognizes that a lot of ancillary chemicals used in natural gas processing may not contain VOC or methane (*e.g.*, sodium carbonate, sodium silicate) or only include VOC or methane in small amounts. The EPA also acknowledges that equipment leak component monitoring on process units subject to NSPS KKK, NSPS OOOO, or NSPS OOOOa (which include a VOC content of 10 percent by weight applicability threshold) have resulted in many components not being subject to LDAR requirements and have never previously been tagged or subject to the equipment leak monitoring requirements of NSPS KKK, NSPS OOOO, or NSPS OOOOa. Under the March 2024 Final Rule provisions, the EPA recognizes that having to tag each equipment emissions component located at a natural gas processing plant for monitoring would be a significant undertaking considering the number of equipment emissions components located at a natural gas processing plant.

EPA Method 18 is designed for ppm level sources (EPA Method 18, section 1.2.1). As such, very small traces of methane or VOC in a gas stream may be detectable using EPA Method 18. This supports the petitioners' statements that the current requirements related to potential to emit methane or VOC could effectively require monitoring of all process unit equipment components.

The EPA Method 21 leak definition is 500 ppmv. As such, it is possible to have gas streams that have a detectable concentration of methane and/or VOC that do not result in a process unit equipment component with a detectable leak. In general, the Agency expects that the vast majority of process unit equipment components at a natural gas processing plant will be in methane or VOC service when implementing a 1 percent by weight and 10 percent by weight thresholds for methane and VOC, respectively.

The average methane compositions for components in VOC and non-VOC service when modeling the impacts of different LDAR programs were well over 50 percent by weight.²⁶⁵ As such, the EPA believes that a 1 percent by weight methane threshold would effectively require monitoring of the predominant processes and streams at the natural gas processing plant. The EPA also believes that gas streams with trace quantities of methane or VOC would not appreciably contribute to the plant's methane or VOC emissions due to (1) the paucity of components that the 1 percent by weight methane and 10 percent by weight thresholds would exclude, and (2) the low methane and VOC mass emissions that may occur from excluded components given the low concentrations of regulated pollutants in these streams.

However, the EPA does not have sufficient data at this time to validate a threshold of 1 percent by weight methane. While the EPA believes a 1 percent by weight methane threshold is a conservative threshold that likely limits monitoring of components to only those components processing natural gas in appreciable amounts, the Agency requests specific information and monitoring data for processing equipment at natural gas plants that would support a 1 percent by weight equipment applicability methane concentration threshold. (Question III.8c) The Agency is also requesting specific information and monitoring data for processing equipment at natural gas plants to support a 10 percent by weight equipment applicability VOC concentration threshold. (Question III.8d)

In conclusion, the EPA proposes to revise the March 2024 NSPS OOOOb

²⁶³ 87 FR 74808 (December 6, 2022).

²⁶⁴ California Air Resources Board (CARB) (2020). Measurement of Produced Water Air Emissions

from Crude Oil and Natural Gas Operations. Final Report. May 2020. Available at: <https://ww2.arb.ca.gov/>.

²⁶⁵ U.S. EPA (2021). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Background Technical Support Document for the Proposed New Source Performance Standards (NSPS) and Emissions Guidelines (EG). October 2021. See section 10.4.1.1 (Equipment Leak Model).

and EG OOOOc regulatory language at 40 CFR 60.5400b(a) and 60.5400c(a) to change the equipment applicability threshold to be 10 percent by weight for VOC and 1 percent by weight methane. In addition, the EPA proposes to add definitions for “[i]n VOC service” and “[i]n methane service” and revise the definition for “[e]quipment” at 40 CFR 60.5430b and 60.5430c to reflect the addition of the VOC and methane applicability threshold additions. The EPA also proposes to revise the definition of “[e]quipment” in NSPS OOOOb and EG OOOOc to include equipment “[i]n wet gas service” that parallels language in NSPS OOOOa, which the Agency inadvertently excluded in the March 2024 Final Rule definitions. The EPA believes that the Agency’s proposed regulatory changes to NSPS OOOOb and EG OOOOc have practicality, and that the revision to the definition of “[e]quipment” to include the reference to “in wet gas service” corrects an inadvertent omission that increases clarity. The EPA solicits comment on the appropriateness of a 10 percent by weight VOC concentration and 1 percent by weight methane concentration and equipment thresholds, as well as any additional data or analyses that support or challenge these concentration levels. The Agency also solicits general comments on all aspects of these proposed changes. (Question III.8e)

c. Additional Requests for Comment

In addition, for purposes of setting monitoring requirements for equipment leaks at gas plants, the EPA seeks comment (including data and detailed information) on how often equipment leaks are found at gas plants, the approximate volume of gas emitted during a typical fugitive emissions event at a gas plant, estimates regarding the approximate length of time that equipment leak events lasts at gas plants, and the cost of conducting monitoring for equipment leaks (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs). (Question III.8f)

The EPA is also soliciting comment on the cost effectiveness and cost reasonableness of the gas plant requirements generally. The EPA is specifically requesting information on the appropriate frequency, type of monitoring technology, and other relevant information that may improve the EPA’s cost effectiveness and cost reasonableness analysis, allowing the EPA to better target emission reductions and the EPA also seeks comment on

whether the gas plant requirements in the March 2024 Final Rule are necessary considering this information. (Question III.8g)

J. Associated Gas From Wells Producing Primarily Oil

1. Background

Under the March 2024 Final Rule, NSPS OOOOb and EG OOOOc establish standards and presumptive standards, respectively, for associated gas from wells operated primarily for oil production at well affected and designated facilities. Subject to certain caveats for existing sources, the rule generally requires each well producing associated gas to reduce emissions to the atmosphere through work practices, with some limited allowances for routine or emergency flaring as discussed in more detail below. The work practice standards require operators to recover the associated gas from the separator and either route it to a gas gathering flow line or a collection system leading to a sales line, use it as an onsite fuel source, use it for another beneficial purpose that would otherwise rely on a purchased fuel, chemical feedstock, or raw material, or reinject it into the same well or into another well. *See* 40 CFR 60.5377b. Any emissions the operator routes to a control device or flare must be routed through a CVS to a control device which meets the requirements summarized in section III.G and H of this preamble. *See Id.* at 40 CFR 60.5377b(d) and (f).

The NSPS OOOOb provisions under the March 2024 Final Rule separated new wells that produce associated gas into groups based on when construction is/was commenced. New wells in the first group (*i.e.*, those wells that commence construction after May 7, 2026) are required to comply with the work practice standards and cannot routinely flare. The final standards do not allow these wells to routinely flare emissions because the EPA determined, when it finalized the March 2024 rule, that, with advance planning, at least one of the options to avoid routine flaring would be feasible at these wells (including routing the gas to a sales line, using the gas as an onsite fuel source, using the gas for another beneficial purpose that a purchased fuel, chemical feedstock, or raw material would serve, or reinjecting it into the well or into another well).

Wells in the second group (*i.e.*, wells that commence construction between May 7, 2024, and May 7, 2026) were required to comply with the final standard of no routine flaring on or before May 7, 2026. During the interim

period between May 7, 2024, and May 7, 2026, these wells were allowed to route the associated gas through a CVS to a flare or control device achieving at least 95.0 percent reduction of methane and VOC emissions, provided the owner and/or operator demonstrated that the work practice standard options discussed above were technically infeasible. The determination of technical infeasibility was required to be certified by a professional engineer or other qualified personnel, the flare or control device must meet the requirements of 40 CFR 60.5412b, and the CVS must meet the requirements of 40 CFR 60.5411b(a) and (c). After May 7, 2026, these wells were no longer allowed to flare routinely (with or without a showing of technical infeasibility) and were subject to the work practice standards.

For wells in the third group (*i.e.*, wells that commenced construction, were modified, or were reconstructed, between December 6, 2022, and May 7, 2024), the March 2024 Final Rule allows routing the associated gas through a CVS to a flare or control device that reduces methane and VOC emissions by at least 95.0 percent on a routine basis, provided that the owner or operator documents and certifies that complying with the work practice standards is technically infeasible. As required for the wells in the second group, the determination of technical infeasibility must be certified by a professional engineer or other qualified personnel, the flare or control device must meet the requirements of 40 CFR 60.5412b, and the CVS must meet the requirements of 40 CFR 60.5411b(a) and (c). This allowance for technical infeasibility is provided for a period of 1 year at a time. Therefore, owners and operators of wells in the third group must renew the technical infeasibility determination/certification annually to continue routing the associated gas to a flare or control device.

Consequently, since May 7, 2026, all oil wells subject to NSPS OOOOb that were constructed, reconstructed, or modified after May 7, 2024, have been required to route their associated gas to a gas gathering line or collection system to a sales line, recover the associated gas and use it as an onsite fuel source or other beneficial use, or recover the associated gas and reinject it into a well, or, under specific scenarios, are allowed to temporarily flare emissions.^{266 267}

The model rule for the 2024 final EG separates existing oil wells that produce associated gas into two groups based on

²⁶⁶ 40 CFR 60.5377b(a).

²⁶⁷ 40 CFR 60.5377b(d)(1)–(4).

the amount (mass) of methane in the associated gas. The demarcation between these two groups is 40 tpy of methane. For existing wells that produce associated gas with over 40 tpy of methane, the presumptive standard applies the same work practice requirements that apply to new sources. However, if all of these options are technically infeasible, then the model rule allows these existing wells (*i.e.*, those producing associated gas with more than 40 tpy of methane) to route associated gas through a CVS to a flare or control device that achieves 95.0 percent reduction in methane. This pathway also requires a determination of technical infeasibility certified by a professional engineer or other qualified personnel, the flare or control device meeting the requirements of 40 CFR 60.5412c, the CVS meeting the requirements of 40 CFR 60.5411c(a) and (c), and an annual recertification of technical infeasibility. For wells that produce associated gas containing less than 40 tpy methane, the model rule's presumptive standard allows owners or operators to route associated gas through a CVS to a flare or control device that achieves 95.0 percent reduction in methane without any technical infeasibility determination. The key difference for these two different groups of existing wells is that for wells with annual methane in the associated gas greater than 40 tpy owners and operators are not required to demonstrate that it is infeasible for technical reasons to utilize any of the work practice options before routing associated gas to a flare or control.

For both new and existing oil wells that are routing their associated gas to a sales line, the March 2024 Final Rule provides some limited flexibilities to temporarily flare associated gas or route to a control device that reduces methane and VOC emissions by at least 95.0 in accordance with 40 CFR 60.5377b(d) and 40 CFR 60.5391c(c) under the following conditions:

- For up to 30 days during a temporary interruption in service from the gas gathering line or collection system.
- For up to 72 hours in instances where the associated gas does not meet gas pipeline specifications, or when the composition of the associated gas does not meet the quality requirements for another useful purpose.
- For up to 72 hours during repair and maintenance, including blow downs, a production test, or commissioning, until the incident is resolved. However, under exigent circumstances, owners and operators might be able to route to a flare or

control device for more than 72 hours.²⁶⁸

- For up to 72 hours when there are instances that a malfunction or incident endangers the safety of operator personnel or the public. However, under exigent circumstances, owners and operators might be able to route to a flare or control device for more than 72 hours.²⁶⁹

In all instances where temporary flaring is needed for reasons beyond an owner or operator's control, the NSPS OOOOb and EG OOOOc provisions include backstop provisions that require flaring to cease when an incident triggering the need for flaring has been resolved.

2. Concerns Raised by Stakeholders

The EPA has received input from industry stakeholders identifying issues with the NSPS OOOOb and EG OOOOc associated gas standards and presumptive standards.

The concerns raised can be summarized in four basic categories:

(1) Concerns regarding Agency's BSER determination under CAA section 111(b) for associated gas. Industry representatives have requested that the EPA revisit the Agency's previous analyses conducted for associated gas and perform a new BSER analysis for associated gas, including revisiting and revising the technical infeasibility requirements.

(2) Situations, many related to third-party gas gathering line or collection systems, that prevent operators from complying with the temporary flaring allowances in 40 CFR 60.63.77b(d)(3) and (4) and 40 CFR 60.5391c(c)(3) and (4) within the allowable timeframes.

(3) Instances where owners and operators of wells constructed during the window of May 7, 2024, and May 7, 2026, were required to comply with one or more of the options in 40 CFR 60.5377b(a) by May 7, 2026, and had arrangements to route the associated gas to a gas gathering line or collection system. Operators report that due to construction delays compliance was not possible by the flaring allowance "phase-out" date. Stakeholders note that this situation is not unique to the 2024–2026 group of wells; any new well that is constructed where an owner or operator plans to connect to a nearby gas gathering line or collection system may face similar compliance challenges if unable to immediately connect upon well start-up due to delays in construction of the gas gathering line or collection system.

²⁶⁸ 91 FR 18093, Apr. 9, 2026.

²⁶⁹ *Id.*

(4) Areas where there are no existing oil and natural gas operations and no gas gathering lines or collection system pipelines, where midstream companies will not build gas gathering lines or collection infrastructure until there is sufficient gas from the area to justify the investment. In these instances, operators assert that wells cannot be drilled under the provisions of NSPS OOOOb because the wells cannot meet the requirement to connect to a gas gathering line or collection system (or employ any of the other compliance options).

Sections III.J.2.a through III.J.2.d provide more details on the concerns raised by industry:

a. EPA's Approach to BSER and Technical Infeasibility Requirements

Industry representatives submitted letters to the EPA disagreeing with the Agency's BSER determination in the 2024 Final Rule, under CAA section 111(b), for associated gas, particularly where the BSER includes "requirements that will phase out and eventually prohibit routine flaring of associated gas" from wells that were new or modified as of 2022.^{270 271 272} According to one industry representative, connecting a well to a gathering system is not a technology and it is not a retrofit; rather, they argue it is an incorrect determination by the EPA to treat the identification of, and reliance on, a third-party gas gathering system to connect to and accept associated gas as BSER. They contend that the "achievable" degree of emissions reduction from such connection is zero in areas where connection to a gas gathering line or collection system is technically infeasible, particularly in many high-producing, rapidly developing regions where there are no

²⁷⁰ Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

²⁷¹ Continental Resources (2026a). Letter to the EPA Administrator. Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Request for EPA's reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 CFR 60.5377b. April 23, 2026.

²⁷² Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40CFR 60.5377b. June 16, 2026.

other options for compliance.²⁷³ The industry representative stated that requiring any new well to connect to a midstream gas gathering system—when such an option is outside the control of the source and is not available—is not an inside-the-fenceline technology (and therefore of questionable legality under the Supreme Court's 2022 decision in *West Virginia*). They added that the cost for midstream companies to construct pipelines to these wells is exorbitant and therefore unreasonable under relevant precedent, citing the D.C. Circuit's 1973 decision in *Essex Chemical Corporation*. For these reasons alone, the industry representatives asserted, the EPA should conclude that eliminating routine flaring is not BSER. The industry representative requested that the EPA fully rescind and revise the BSER determination for associated gas.²⁷⁴ In the short-term, both industry representatives suggested that the EPA extend the allowance for flaring based on technical infeasibility and modify the technical infeasibility demonstration provisions to provide temporary relief.

b. Temporary Flaring Allowances

Several industry representatives with operations in, or in close proximity to, the Williston Basin submitted letters to the EPA indicating that there are circumstances in which they cannot meet the requirements to route associated gas to a gathering or collection system to a sales line, recover the associated gas and use it as an onsite fuel source or other beneficial use, or recover the associated gas and reinject it into a well.^{275 276 277 278 279}

²⁷³ Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

²⁷⁴ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40 CFR 60.5377b. June 16, 2026.

²⁷⁵ Continental Resources (2026a). Letter to the EPA Administrator. Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Request for EPA's reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 CFR 60.5377b. April 23, 2026.

²⁷⁶ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental

Specifically, industry representatives informed the EPA that even when operators are connected to existing gas gathering lines or collection systems, some operators are experiencing capacity constraints in the downstream pipeline, storage, and processing network used to transmit the associated gas to market; or gas quality issues not allowing them to route gas to a sales line. Companies, including Continental Resources, Inc.,²⁸⁰ Chord Energy Corporation,²⁸¹ and Kraken Oil & Gas Partners LLC,²⁸² informed the EPA of several scenarios where gas gathering or collection system infrastructure capacity constraints outside of an operator's control may result in an oil well being unable to comply with the associated gas control options specified in the NSPS OOOOb. Examples provided by industry include situations when: (1) third-party sales gas gathering lines or collection systems not accepting all or part of the associated gas from an individual oil well because the system

Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40 CFR 60.5377b. June 16, 2026.

²⁷⁷ Chord Energy (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR pt. 60, subpt. OOOOb: Reconsideration of the Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 17, 2026.

²⁷⁸ Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

²⁷⁹ KODA Resources Operating LLC (KODA) (2026). Letter Re: Example of its North Dakota development in support of additional clarifications regarding the associated gas flaring provisions at 40 CFR 60.5377b. May 5, 2026.

²⁸⁰ Continental Resources (2026a). Letter to the EPA Administrator. Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Request for EPA's reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 CFR 60.5377b. April 23, 2026.

²⁸¹ Chord Energy (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR pt. 60, subpt. OOOOb: Reconsideration of the Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 17, 2026.

²⁸² Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

is at full capacity or operating at full sales line pressure; (2) unpredictable well surges that exceed the gas pipeline network system capacity; or (3) market conditions result in negative gas prices and supply exceeds demand. In response to gas gathering line or collection system capacity concerns, the EPA issued a Press Release²⁸³ and a memorandum²⁸⁴ that acknowledged that operators are experiencing capacity constraints in the downstream pipeline, storage, and gas processing network used to get the associated gas to market. The press release and memorandum pointed out that 40 CFR 60.5377b(d)(3) allows operators to route associated gas to a flare or control device for the duration of a temporary interruption, for up to 30 days per incident, and indicated that the Agency considers that applying this provision for situations involving temporary gas gathering line or collection system capacity constraint instances is appropriate.

In addition to gas infrastructure capacity issues, industry representatives also raised concerns about circumstances in which a third party gas gathering line or collection system operator does not accept associated gas or the gas cannot be used onsite because of gas quality issues related to elevated H₂S gas content, BTU specifications and hydrate formation gas quality issues where more than the 72 hours allowable for flaring under 40 CFR 60.5377b(d) is needed to resolve.^{285 286}

²⁸³ EPA Press Release: EPA Clarifies When Oil and Natural Gas Producers Can Flare After Phase Out Deadline. <https://www.epa.gov/newsreleases/epa-clarifies-when-oil-and-natural-gas-producers-can-flare-after-phase-out-deadline>. May 1, 2026.

²⁸⁴ U.S. EPA (2026). Memorandum. Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. From Aaron Szabo, OAR Assistant Administrator to Regional Administrators, 1–10. April 30, 2026. Available at: https://www.epa.gov/system/files/documents/2026-04/signed_final_o-g-associated-gas-memo_4-30-26_0.pdf.

²⁸⁵ Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

²⁸⁶ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40 CFR 60.5377b. June 16, 2026.

Following the press release²⁸⁷ and memorandum,²⁸⁸ the EPA received a letter from a law firm representing several oil and gas production companies operating in multiple basins across the United States requesting clarification on the guidance that the EPA issued in their April 2026 memorandum.²⁸⁹ Specific requests for clarification included: (1) how the EPA intends to address situations in which gas gathering line or collection system capacity constraints last longer than 30 consecutive days (e.g., 60 days, 90 days, 6 months, or even years) where the production company's only options are to flare the associated gas or shut-in the oil wells; (2) what happens under the scenario where a midstream gas gathering line company detects elevated levels of H₂S in its gathering flow pipeline or sales pipeline, but cannot identify which well(s) are responsible, and therefore ceases accepting gas from all the wells in the area operated by multiple production companies, while it investigates owners or operators with no option other than flaring its associated gas or shutting-in the well; and (3) how the EPA intends to treat other scenarios involving third-party gas gathering infrastructure access constraints beyond an owner or operator's control where the operator is similarly forced to flare the associated gas or shut-in the well.

c. Flaring Allowance for Wells Where a Connection to a Gas Gathering Line or Collection System Is Underway

As discussed in section III.J.1 of this preamble, wells that commenced construction between May 7, 2024, and May 7, 2026, were required to comply with the final standard of no routine flaring on or before May 7, 2026. In the interim period between May 7, 2024, and May 7, 2026, these wells were allowed to route the associated gas through a CVS to a flare or control device achieving at least 95.0 percent methane and VOC reduction, provided

the owner and/or operator demonstrated that the work practice standard options discussed above were technically infeasible. For wells that commenced construction, were modified, or were reconstructed between December 6, 2022, and May 7, 2024, the March 2024 Final Rule allowed operators to route the associated gas through a CVS to a flare or control device achieving at least 95.0 percent methane and VOC reduction on a routine basis, provided that the owner or operator documented and certified that compliance with the work practice standards was technically infeasible. Since May 7, 2026, all oil wells subject to NSPS OOOOb that were constructed, reconstructed, or modified after May 7, 2024, have been required to route their associated gas to a gas gathering line or collection system leading to a sales line, recover the associated gas and use it as an onsite fuel source or other beneficial use, or recover the associated gas and reinject it into a well, or, under specific scenarios, are allowed to temporarily flare emissions.^{290 291}

One industry representative provided production and operational details describing their ongoing efforts to comply with the March 2024 Final Rule NSPS OOOOb requirements.²⁹² They reported operating 65 wells in an extensional area of the Williston Basin in North Dakota. Of these, sixteen (16) of their wells began construction before May 7, 2022, and are not subject to the NSPS OOOOb's associated gas requirements. Twenty-nine (29) of their wells began construction between May 8, 2022, and May 7, 2024, and, as the industry letter suggests, have the option to comply with the NSPS OOOOb's associated gas requirements by routing to a control device provided there is a valid technical infeasibility determination. They further explained that fifteen (15) are delineation wells drilled to determine the boundary of the field or producing reservoir and are therefore not subject to NSPS OOOOb's associated natural gas requirements. They concluded by reporting that five (5) of their wells are development wells drilled after May 7, 2024, and are subject to the flaring prohibitions in 40 CFR 60.5377b(b).

The industry representative stated that they do not yet have access to a gas gathering line or collection system to capture 100 percent of the associated

gas from their oil wells.²⁹³ According to their example, they began discussions with third-party midstream companies in 2019. At the time, they noted that they had only drilled two initial wells and had insufficient natural gas volumes or a proved drilling inventory to generate interest from midstream companies. As such, they constructed a centralized facility to gather and process natural gas as an interim measure until a third-party solution was feasible. They indicated that they continued to work with multiple third-party midstream companies to design and scope a midstream project to capture 100 percent of their natural gas.

By 2023, the industry representative had contracted a dedicated drilling rig that substantially increased production volumes. They reported that the initial project scopes indicated a much smaller project scale, requiring low pressure gathering lines connected into existing infrastructure with an estimated in-service timeline of more than 6 months. However, as their drilling program continued to produce successful results and further delineate the field, other producers began shifting development plans towards their acreage. They reported that many of these producers' acreage was positioned along existing legacy pipeline gathering systems and were already contractually connected to the midstream providers with whom the industry representative had been negotiating. As a result, existing midstream capacity was consumed. Between 2023 and 2024, the scope of their operations expanded substantially, increasing from and after engagement with several midstream companies. The owner identified a midstream company that specializes in gathering stranded associated natural gas. In 2025, they pre-funded engineering work while working to finalize a gas gathering system contract that would capture 100 percent of their produced associated natural gas. During this period, the operator also doubled the capacity across their gas gathering system and central facility to increase natural gas capture. In total, the expanded project will take 18 months to be in-service, rather than the 6-month timeframe previously contemplated when a low-pressure option was under consideration. The 18-month timeline is driven by both regulatory components (approximately 7–10 months for the cross-border pipeline) and the long lead-time needed for compression and plant

²⁸⁷ EPA Press Release: EPA Clarifies When Oil and Natural Gas Producers Can Flare After Phase Out Deadline. <https://www.epa.gov/newsreleases/epa-clarifies-when-oil-and-natural-gas-producers-can-flare-after-phase-out-deadline>. May 1, 2026.

²⁸⁸ U.S. EPA (2026). Memorandum. Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. From Aaron Szabo, OAR Assistant Administrator to Regional Administrators, 1–10. April 30, 2026. Available at: https://www.epa.gov/system/files/documents/2026-04/signed_final_o-g-associated-gas-memo_4-30-26_0.pdf.

²⁸⁹ Holland & Hart. (2026). Letter Re: May 1, 2026, Guidance and April 30, 2026, Memorandum: Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. Letter to Aaron Szabo, OAR Assistant Administrator from Emily C. Schilling, Holland & Hart. May 6, 2026.

²⁹⁰ 40 CFR 60.5377b(a).

²⁹¹ 40 CFR 60.5377b(d)(1)–(4).

²⁹² KODA Resources Operating LLC (KODA) (2026). Letter Re: Example of its North Dakota development in support of additional clarifications regarding the associated gas flaring provisions at 40 CFR 60.5377b. May 5, 2026.

²⁹³ KODA Resources Operating LLC (KODA) (2026). Letter Re: Example of its North Dakota development in support of additional clarifications regarding the associated gas flaring provisions at 40 CFR 60.5377b. May 5, 2026.

expansion components, with delivery times being pushed out due to supply chain constraints. This industry representative asserted that if some percentage of their operations' associated natural gas cannot be flared, they may be forced to shut-in production, amounting to an estimated impact of up to \$500 million and the potential delay or cancellation of a \$75 million transboundary midstream infrastructure project which requires ongoing production to remain financially viable.

Another example highlighted by a law firm representing several oil and natural gas production companies involves situations where a production company drills wells in a previously undeveloped area 25 miles or more from any gathering flow pipeline or sales pipeline.²⁹⁴ While the wells produce oil and associated gas in paying quantities, initially, when there are only a few wells, no midstream gas gathering company will commit to construct a pipeline to them to take the gas. In this example, the production company drilled additional wells, while necessarily flaring the associated gas, and ultimately generated enough volume of gas to entice a midstream gas gathering company to build a gathering flow pipeline or a sales pipeline to the wells to collect the gas. However, the pipeline construction will not be completed for 18 to 24 months. As such, the production company's only options during this period are to flare the associated gas or shut-in their oil wells.

d. Areas With No Proximity to Existing or Planned Gas Gathering Line or Collection System

Industry representatives also provided examples of instances where an owner or operator does not have access to a gas gathering line or collection system for reasons beyond their control, including: (1) wells located in extensional or frontier development areas where no third-party gathering connection exists; (2) areas where third-party midstream operators have permanently exited; or (3) situations where existing third-party infrastructure has failed and economic conditions do not support replacement.^{295 296}

²⁹⁴ Holland & Hart. (2026). Letter Re: May 1, 2026, Guidance and April 30, 2026, Memorandum: Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. Letter to Aaron Szabo, OAR Assistant Administrator from Emily C. Schilling, Holland & Hart. May 6, 2026.

²⁹⁵ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental

Considering the associated gas examples where temporary flaring would be needed until operators can route associated gas to a gas gathering line or collection system under development (see section III.J.2.b of this preamble), those examples also illustrate circumstances in which owners and operators in existence may not produce enough associated gas to attract a midstream gas gathering company to invest in the infrastructure to capture that gas. Under the March 2024 Final Rule provisions, operators in this situation would be unable to drill more wells to increase gas volumes to a level that would justify midstream gas gathering company investment in the necessary infrastructure. This scenario leaves owners and operators with no option but to flare the associated gas from existing wells or shut-in the wells.

One industry representative elaborated that third-party midstream operators may permanently exit a region, cease maintenance of a gathering system, or decline to repair damaged infrastructure when the economics no longer support continued operation.²⁹⁷ According to the industry representative, this is most common in mature production areas where midstream throughput has declined, and at remote facilities where the cost of maintaining infrastructure exceeds the midstream operator's expected return. When this occurs, the upstream operator's wells are left without takeaway through no fault of the upstream operator and through circumstances outside the operator's control. They added that the gas becomes stranded not because the well changed, but because the midstream economics changed. In response, they noted that the operator's available options are limited: flare the stranded portion of associated gas to maintain oil production; attempt to build

Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40CFR 60.5377b. June 16, 2026.

²⁹⁶ Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

²⁹⁷ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40 CFR 60.5377b. June 16, 2026.

replacement gathering at a cost that is rarely economic; or shut-in the well.

Another reason provided by industry representatives where routing associated gas to an existing gas gathering line or collection system is not a viable option includes when it is economically infeasible to route associated gas to a sales line or use it onsite. This can occur, for example, when a mature well's production has declined to the point where routing to a sales line or onsite use is no longer viable.²⁹⁸

The EPA agrees with industry representatives' discussion and information related to the associated gas provisions and understands that, under the current structure of the provisions in NSPS OOOOb and EG OOOOc, circumstances could arise in which active wells may face the choice of shutting in and ceasing production to not violate the standards or to operate in violation of the standards. As discussed in Section III.J.2, industry representatives requested the EPA entirely revisit the previous BSER determination for the associated gas provisions. They raised concerns indicating that the current BSER for associated gas may not be appropriate.

3. EPA Considerations and Proposed Action

a. Revisions to BSER

The EPA is proposing to revise BSER to routing associated gas through a CVS to a control device or flare that achieves 95 percent reduction in emissions or greater. This section discusses the Agency's proposal that the previous BSER determination of routing associated gas to a sales line is not BSER, followed by a discussion of the proposed BSER determination for associated gas.

i. Routing Associated Gas to a Sales Line Is Not BSER

The EPA is proposing that routing associated gas to a sales line may no longer be included as a viable control option in the BSER analysis. The BSER analysis conducted for this control option in the March 2024 Final Rule included several key assumptions, predictions, and foundational underpinnings that recent information has shown are not accurate. New facts significantly call into question the

²⁹⁸ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40 CFR 60.5377b. June 16, 2026.

achievability of this control option. Further, the control option too heavily relies on actions of third parties that owners and operators (those subject to the EPA's regulations) have no control over.

In the March 2024 Final Rule, the EPA anticipated that "owners planning on drilling new wells in the future have the ability to plan ahead to ensure that the associated gas is routed to a sales line."²⁹⁹ But this statement was based on predictions about the industry that have not come to fruition and thus inaccurate. In that rulemaking, the EPA cited to some States that have essentially banned routine flaring of associated gas, and to a voluntary commitment from some companies to end routine flaring by 2030.³⁰⁰ However, these States and companies do not represent the entire industry that the EPA is charged with regulating. Further, neither these state regulations nor the voluntary commitments are governed by (required by) the CAA, so their existence does not necessarily mean that similar requirements are permissible under the CAA. As discussed in sections III.J.2.a through III.J.2.d of this preamble, some companies in certain parts of the country cannot route their associated gas to a sales line, even with advanced planning.

While the EPA was aware of these potential issues, in the 2024 Final Rule, the Agency made assumptions about the industry that presumed there would be timely and sufficient sales line infrastructure development. However, new information (see sections III.J.2.c and d of this preamble) since promulgation of the March 2024 Final rule shows that the EPA's assumptions have not been borne out by real-world industry development.

In the EPA's TSD for the March 2024 Final Rule, the Agency identified several "challenges" with the control option of routing to a sales line.³⁰¹ First, in 2024 the Agency knew that in many places "pipeline infrastructure is not in place to transport captured gas away from the wells."³⁰² The EPA assumed that pipeline infrastructure and capacity would keep pace with new oil wells such that all new oil wells would have

sufficient pipeline availability to route all of their associated gas into a sales line. Second, the EPA acknowledged that "[b]uilding a gathering pipeline system and associated compressors is a large capital expense and requires permits and negotiations with landowners."³⁰³ Third, the EPA recognized that "oil wells are drilled by exploration and production companies; to tie into a gathering pipeline system would require coordination with midstream gas companies and would depend on multiple variables of the associated gas produced from the oil well."³⁰⁴ Taken together, the second and third points acknowledge that owners and operators of wells (the regulated entity) do not control the necessary midstream infrastructure and that the regulated party, therefore, necessarily depends on actions of outside parties (third parties) to achieve compliance, and that completing all steps to achieve compliance is very complicated and expensive. Despite all of these identified obstacles, the Agency still finalized routing to sales as the BSER based on the general idea that owners and operators would find a way to comply; that "opportunities exist for advance planning" and that "owners and operators of newly drilled wells have the flexibility to plan and coordinate the construction of gas gathering systems even over extended distances."^{305 306}

Regarding the cost of the control option, the EPA likewise made assumptions regarding the availability of infrastructure. For example, in the March 2024 Final Rule, the EPA cited the 2021 Proposal, stating that it was assumed "that in situations where gas sales line infrastructure is available, there is minimal cost to owners and operators to route the associated gas to the sales line."³⁰⁷ As such, even in the cost assessment aspect of the BSER analysis, the EPA was assuming that gas sales line infrastructure was available and accessible, which the evidence now shows is not the case in all areas of the country.

Recent information (see section III.J.2.c and d of this preamble) from industry stakeholders has shown that even with advanced planning and flexibility to coordinate with owners and operators of gas gathering systems (*i.e.*, third parties that are not regulated by the EPA in this action), some owners

and operators of oil wells cannot route their associated gas into a sales line. For example, the Koda letter (explained in more detail above in section III.J.2.c) outlines one company's planning efforts that resulted in not being able to route all of their gas into sales lines.³⁰⁸

The ability to route associated gas to a sales line depends entirely on third-party gathering and midstream companies (*i.e.*, companies that are not part of the regulated upstream category). These companies determine when and where infrastructure is built, the capacity of that infrastructure, and which wells they will accept gas from—decisions generally outside the control of oil well owners and operators. Even where a connection exists, gathering and midstream companies may decide to stop accepting gas at any time. The EPA's 2024 TSD focused on state regulations in Colorado, New Mexico, Utah, and Wyoming to support making route to sales the standard.³⁰⁹ But recent information from industry stakeholders discusses problems for sources in North Dakota, South Dakota, Montana, Texas, Oklahoma, and other states that EPA did not consider deeply in the context of the March 2024 Final Rule. Other information from industry stakeholders (explained in more detail above in section III.J.2) further shows that the assumptions regarding the availability of gas gathering and sales lines that underpinned the BSER determination in the March 2024 Final Rule have not borne out as the EPA originally predicted.³¹⁰ In these situation where a

³⁰⁸ KODA Resources Operating LLC (KODA) (2026). Letter Re: Example of its North Dakota development in support of additional clarifications regarding the associated gas flaring provisions at 40 CFR 60.5377b. May 5, 2026.

³⁰⁹ U.S. EPA. (2023b). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Background Technical Support Document (TSD) for the Final New Source Performance Standards. Chapter 4. (Associated Gas). Section 4.2. November 2023.

³¹⁰ Continental Resources (2026b). Re: Standards of Performance for Crude Oil and Natural Gas Facilities, 40 CFR part 60, subpart OOOOb: Supplemental Operational Scenarios and Conceptual Framing in Support of Continental Resources' April 23, 2026, Letter Requesting Reconsideration of the BSER for Associated Gas and the Technical Infeasibility Demonstration Provisions in 40CFR 60.5377b. June 16, 2026; Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026; Holland & Hart. (2026). Letter Re: May 1, 2026, Guidance and April 30, 2026, Memorandum: Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. Letter to Aaron Szabo, OAR Assistant Administrator

²⁹⁹ 89 FR 16945 (March 8, 2024).

³⁰⁰ 89 FR 16944 (March 8, 2024).

³⁰¹ <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-3988>.

³⁰² U.S. EPA. (2023b). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Background Technical Support Document (TSD) for the Final New Source Performance Standards. Chapter 4. (Associated Gas). Section 4.3.1. November 2023.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ 89 FR 16944 (March 8, 2024).

³⁰⁶ 89 FR 16942 (March 8, 2024).

³⁰⁷ 89 FR 16940 (March 8, 2024) (quoting 86 FR 63237 (November 15, 2021)).

gathering or sales lines remains unavailable despite advanced planning and coordination, companies must shut down their operators to avoid noncompliance. While the March 2024 Final Rule stated that circumstances “beyond the control of the owner or operator” should not result in shut-ins, the possibility of shutting in an oil well is exactly what some owners and operators are now facing.³¹¹ Since timely availability of sales line infrastructure for all new oil wells was the key assumption underpinning the 2024 BSER determination, and infrastructure availability is still limited, at least in certain areas, route to sales can no longer be considered as a universally available and technically viable control option.

Moreover, since promulgation of the March 2024 Final Rule, the EPA has realized that owners and operators are very likely invoking one of several flaring exemptions more often than originally anticipated. After finalizing the March 2024 Final Rule, the EPA soon realized that the rule had problems regarding certain flaring exemptions and we granted reconsideration on two technical issues, one of which was “temporary flaring provisions for associated gas in certain situations.”³¹² Based on that reconsideration, the EPA amended some of the temporary flaring provisions because they were too limiting.³¹³ In short, the EPA realized that sources needed more time to flare that originally anticipated. Then, in April 2026, the EPA issued a guidance memorandum to again address an issue with temporary flaring of associated gas because of the large number of sources invoking the rule’s exceptions to flare their gas instead of routing it into a sales line.³¹⁴ The industry letters that prompted the guidance memorandum detailed many situations beyond the control of the owner/operator that resulted in not being able to route the oil well’s associated gas into a sales line.³¹⁵ The frequent and widespread flaring of associated gas in the context

of a requirement that purports to prohibit flaring demonstrates that the EPA’s previous BSER analysis was flawed. The fact that oil wells must so often rely on these flaring exemptions calls into question whether routing to a sales line can be considered the BSER, and it calls into question the EPA’s previous claims that the BSER resulted in 100% emission reduction.

The EPA previously assumed that all associated gas would be routed into a sales line at all times, but in reality, sources often flare under the current rule’s exceptions. As such, it is very likely that the EPA overestimated the true emission reduction from routing to a sales line and thus made a decision based on an inaccurate BSER analysis that does not reflect how these sources actually operate in the real world. In other words, the difference between the “100 percent capture” via routing to a sales line is actually lower than that and closer to 95 percent which is the efficiency from flaring. In reality, many sources are still flaring because they cannot route all of their associated gas to a sales line all of the time.

Lastly, with regard to costs, the EPA’s BSER analysis did not account for the added costs of buying, installing, and operating a flare to comply with the temporary flaring exceptions, nor did the EPA assume that flares already onsite for other purposes could accept the increase gas flow during these periods. Since temporary flaring is needed for the route to sales standard, many (if not all) owners and operators routing to a sales line need to purchase, install, and maintain a flare. The EPA did not consider this cost. As such, the 2024 BSER analysis underestimated the true costs of the current standard and overestimated emission reductions; in reality, routing to a sales line has proven less effective and more costly than the EPA previously anticipated.

Next, the March 2024 Final Rule 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 oil wells subject to the “route to sales line” requirements are dependent on third parties to develop and operate virtually all the components of the sales line. Many owners and operators of upstream facilities do not own or operate the midstream pipelines that are required to implement the standard for associated gas. Companies cannot compel

midstream operators to expand their infrastructure so that they can accept additional natural gas. This system differs 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 comply with the standard by the time the well begins producing, 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 thus not an allowable form of BSER.

Put another way, the EPA has, upon further review, determined that the novelty of a BSER predicated on widespread infrastructure developed and operated by third parties warns strongly against its selection. Much of the necessary gathering and sales line 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, if any, control. For example, the EPA correctly explained in the TSD for the March 2024 Final Rule that routing gas to a sales line entails third parties and depends on “multiple variables”, including permitting and “negotiating with landowners.”³¹⁶ It is possible that in some instances a landowner might simply refuse to allow any gas pipeline to cross their land. Further, a midstream company (not the regulated owner/operator) would very likely be the entity planning, contracting, and maintaining the necessary sales line and be the third party that controls which owner/operators may route gas into their sales line. This situation is not within the oil well owner’s or operator’s control. Moreover, natural resources such as oil reservoirs only occur in certain geographic areas of the country. Owners and operators do not get to pick and choose where the oil is located; they must develop their regulated source where the oil exists and in some cases the oil exists in locations where these variables prove unworkable. In some

from Emily C. Schilling, Holland & Hart. May 6, 2026.

³¹¹ 89 FR 16949 (March 8, 2024).

³¹² https://www.epa.gov/system/files/documents/2024-05/letter-to-api-and-apx-5.6.24-signed_1.pdf.

³¹³ 91 FR 18056 (April 9, 2026).

³¹⁴ U.S. EPA (2026). Memorandum. Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. From Aaron Szabo, OAR Assistant Administrator to Regional Administrators, 1–10. April 30, 2026. Available at: https://www.epa.gov/system/files/documents/2026-04/signed_final_o-g-associated-gas-memo_4-30-26_0.pdf.

³¹⁵ See letters here: <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-operations/implementation-oil-and-natural-gas-air>.

³¹⁶ U.S. EPA. (2023b). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Background Technical Support Document (TSD) for the Final New Source Performance Standards. Chapter 4. (Associated Gas). November 2023.

cases, new oil wells are far from the existing infrastructure that is needed to move the gas to a sales line. In other cases, the oil wells may be located in proximity to an existing sales line but the downstream infrastructure is not capable of handling new volumes of natural gas. The owner/operator of the sales line may not be able to accept new gas for a variety of reasons. For instance, the pressure in the existing sales line pipeline may be too great for the new oil wells to be able to inject their gas into the pipeline much of the time, or the natural gas processing plant may not have the capacity to accept the additional gas. Even after an oil well site is connected to a sales line, there may be multiple reasons why the pipeline is unable to accept the gas. This could be due to the quality of the natural gas at the oil well site; or similarly, it could be due to the quality of natural gas at neighboring well sites owned by other companies, resulting in a situation where the midstream operator is unwilling to accept any natural gas in the area until the source of the poor-quality natural gas is identified. There can also be bottlenecks at some point in the pipeline network that prevent the midstream operators from accepting all of the natural gas from a well site.

A BSER based on routing associated gas to a sales line thus requires involvement, at multiple steps, of a complex web of different entities across a wide range of disciplines, some of whom may not be part of the regulated source category, or even the broader industry of which it is part, *i.e.*, the oil and gas industry. As just one example, the BSER could entail several different government permitting offices at the local (town, city, and/or county), State and/or federal (other than the EPA) level, multiple individual landowners, and a midstream gas gathering and sales company. The implication is that these third parties are not subject to the same regulatory impetus as the owner or operator of an oil well that would be subject to requirements under the March 2024 Final Rule. The scale of the ancillary infrastructure required to support implementation of the standard 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, operate, and maintain a system to route associated gas to a sales line 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 entire system upon which the standard relies. All this compounds the likelihood of not having the necessary infrastructure in place when oil production begins, which further supports the unreasonableness of the current standard.

The tenuousness of timely compliance given the scope of the requisite infrastructure for routing associated gas to a sales line, coupled with the novelty of the standard and the need for a large number of third parties, is especially apparent when it is contrasted with an air pollution control technology that has been in widespread use in the oil and gas sector for decades: combustion devices (flares), a control technology that does not rely on extensive pipeline infrastructure. It simply requires the owner/operator to purchase, install, and operate the device on-site. While that process does in some ways involve third parties (for example, to build and, perhaps, install the device), the industry has a long history of using these devices such that completing the request steps is not overly complex or unreasonably dependent upon novel third party interactions.

The EPA acknowledges that some owners/operators of oil wells also own and operate their own midstream sales line infrastructure such that these characterizations of heavy reliance on third-party involvement may not be accurate for all sources (although there may be requirements that the midstream company cannot give preference to an upstream company owned by the same parent company). However, the EPA understands this is not often the situation and that in most cases the oil well site owner/operator has little to no control over the sales line infrastructure. The EPA is soliciting comment and information on the proportion of owners and operators that also own or operate their own midstream sales line infrastructure. (Question III.9a)

To be sure, many oil wells can and do route at least some of their associated gas to a sales line. However, in those instances, routing to sales 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 control technology. While sources commonly rely on third parties in the normal operation of their business, the extensive infrastructure requirements for routing to a sales line, coupled with the high level of dependence on third parties, undermines the ability of sources to achieve the emission standards. If any third-party provider responsible for any of the many links in the sales line 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 reliance on third-party infrastructure.

The EPA is thus finding that the March 2024 Final Rule erred by not considering the extent of the ancillary infrastructure and reliance on third parties needed for routing associated gas to a sales line to be deployable at scale.

ii. Proposed BSER Determination

Given the proposed determination that routing to a sales line is not BSER, the EPA evaluated potential BSER options for associated gas from oil wells. The options considered include non-flaring technologies, specifically those currently allowed as alternatives to routing to a sales line, as well as routing gas to a flare/control device to achieve either a 95 percent reduction or a 98 percent reduction (see U.S. EPA. (2026). Technical Memorandum. Analysis of Potential BSER Options for Associated Gas).

The category of non-flaring BSER options considered consists of the non-flaring techniques specified in the standards contained in 40 CFR 60.5377b(a)(2), (3), and (4) of NSPS OOOOb and the presumptive standards contained in 40 CFR 60.5391c(a)(2), (3), and (4) of EG OOOOc. These techniques include the following:

- Recovering associated gas from the separator and using the recovered gas as an onsite fuel source
- Recovering associated gas from the separator and reinjecting the recovered gas into the well or injecting the recovered gas into another well

- Recovering associated gas from the separator and using the recovered gas for another beneficial purpose that would otherwise be served by a purchased fuel or raw material.

Each of these options are discussed below.

Use as an Onsite Fuel Source

The use of associated gas from an oil well as an onsite fuel source is only technically feasible under certain operating conditions. This control option is generally most feasible where gas volumes and pressures are sufficiently stable to support operation of generators or heaters, and where gas composition is compatible with such use, either directly or with limited conditioning. Onsite use may be particularly advantageous when there is a consistent demand for power or heat, enabling offset of diesel or grid electricity consumption. However, the EPA recognizes that not every oil well is suitable for recovering and using associated gas onsite because technical limitations often make it impractical. In many instances, site-specific conditions preclude its implementation. For example, associated gas production may be intermittent, variable, or of insufficient quantity to support stable operation of generators, heaters, or processing equipment. In addition, associated gas may contain contaminants such as hydrogen sulfide (H₂S), carbon dioxide (CO₂), water vapor, or heavy hydrocarbons, which may necessitate extensive conditioning to avoid corrosion, engine damage, or unsafe combustion. Additionally, the intermittent nature of production, especially in unconventional reservoirs, can lead to unreliable or inconsistent gas supply, which hinders the functioning of fuel systems that require steady input. Further, some existing well sites may lack the physical space or infrastructure needed to safely handle, treat, and distribute gas to onsite equipment. Lastly, some sites where onsite use is technically feasible may only be able to use a portion of the associated gas that the oil well produces due to the demand that exists on that site for such fuels. Sites that do not have sufficient onsite demand for all of their associated gas would then have remaining gas that they could not use onsite. While the use of associated gas as an onsite fuel source may constitute a feasible emissions control strategy at some facilities, it is not widely practicable across the affected source category.

Accordingly, while using associated gas as an onsite fuel source is

adequately demonstrated, it is not achievable across the country.

Reinject the Recovered Gas Into the Well or Inject the Recovered Gas Into Another Well

Reinjecting recovered associated gas into the producing well or injecting it into another nearby well may be an attractive option because it can allow operators to avoid flaring or venting while also enhancing reservoir performance. By returning the gas underground, producers may be able to maintain reservoir pressure, which can improve oil recovery and extend the productive life of the field. This approach may also reduce emissions, eliminate the need for immediate gas processing or transportation infrastructure, and offer flexibility by storing the gas for future use when market conditions or infrastructure availability are more favorable. However, reinjection is not technologically feasible for every oil well because it requires reservoirs with the right geological and pressure characteristics to safely accept additional gas. Some geological formations cannot accommodate more gas via reinjection without risking loss of reservoir integrity, unwanted fluid migration, or disruption of natural flow patterns. In certain wells, gas reinjection may interfere with oil displacement mechanisms or alter fluid composition in ways that reduce recovery efficiency. Additionally, not all fields have nearby wells or formations suitable for injection, and some reservoirs may lack the pressure, permeability, or structural stability needed to retain injected gas without risking leakage or contamination of other subsurface zones.

Considering the same adequately demonstrated and achievable criteria for BSER discussed above, the EPA concludes that reinjecting the recovered gas into the well or inject the recovered gas into another well is not achievable across the country.

Recover Associated Gas and Use It for Another Purpose Displacing Purchased Fuel or Raw Material Consumption

Using the recovered gas for another useful purpose that a purchased fuel or raw material serves as a generic “catch-all” provision that does not provide sufficient specificity for establishing BSER. In the December 2022 Supplemental Proposal, the EPA discussed examples of potential “other useful purpose” options to utilize associated gas and avoid venting or flaring, namely methane pyrolysis and condensing the gas and transporting it

to other sites for use.³¹⁷ The December 2022 Supplemental Proposal also discussed technologies to convert gas to liquid and the production of liquified natural gas.

In response to the December 2022 Supplemental Proposal, commenters argued that the technologies identified by the EPA were not broadly practical because they were unproven, not commercially viable, or not technically feasible at many oil-well sites. For example, one company reported deploying a portable cryogenic unit to convert the associated gas to natural gas liquids, but the unit did not perform and was uneconomic.³¹⁸ Because feasibility varies widely by location and technology maturity, commenters urged the EPA not to include a fixed list of beneficial uses.³¹⁹ In the March 2024 Final Rule, the Agency agreed with the commenters and removed all mentions of these, and other, specific other uses.

Therefore, the EPA concludes that neither the generic category of “another useful purpose that a purchased fuel or raw material would serve,” or specific unproven emerging technologies identified, qualify as BSER.

ii. Routing to a Flare or Control Device

The EPA considered two types of flaring options (which includes other control devices): flares or devices that control 95 percent reduction and those that achieve 98 percent reduction. These options are described below.

Flares and Devices That Achieve 95 Percent Reduction

Associated gas can be routed to a flare or another control device capable of achieving 95 percent reduction in emissions. Achieving this level of performance depends on having a consistently lit pilot flame, sufficient combustion temperature, appropriate gas flow rates, and effective mixing of air and hydrocarbons so that the gas fully burns rather than escapes uncombusted. Routing to a flare is an adequately demonstrated technology that is applicable across the country.

In the 2022 Supplemental Proposal Technical Support Document (TSD),³²⁰

³¹⁷ 7 FR 74702, 74779 (December 6, 2022).

³¹⁸ Continental Resources (2026a). Letter to the EPA Administrator. Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Request for EPA’s reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 CFR 60.5377b. April 23, 2026.

³¹⁹ 89 FR 16820, 16950 (March 8, 2024).

³²⁰ U.S. EPA. (2022). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and

the EPA determined that representative associated gas emissions from an oil well, whether new or existing, are 344 tpy methane and 96 tpy VOC, if uncontrolled. The EPA also presented flare costs estimates of \$100,579 in capital costs and \$36,000 in annual costs (including capital recovery and operation and maintenance). After updating these costs to a 2024 base year, the estimated total annual cost of a flare is \$47,411. On that basis, the cost effectiveness is estimated at \$145 per ton of methane reduced and \$523 per ton of VOC reduced for the representative well. These values are in the range that the Agency has considered reasonable in the past.

Flare and Devices That Achieve 98 Percent Reduction

Flares can also achieve 98 percent destruction efficiency when they are properly designed, operated, and maintained. As with a flare designed to achieve 95 percent reduction, performance at a 98 percent reduction also depends on having a consistently lit pilot flame, adequate combustion temperature, favorable gas flow rates, and effective mixing of air and hydrocarbons. However, achieving this higher efficiency requires even more stable conditions—such as steady pressure, wind protection, and appropriate flare tip design—that help ensure complete combustion and enable flares to reach or exceed 98 percent emission reduction under ideal operating environments.

In the November 2021 Proposed Rule, the EPA indicated that combustion devices that are designed to meet a 98 percent control efficiency may not continuously meet this efficiency in practice in the oil and gas industry due to factors such as variability of field conditions. The EPA specifically requested comment on the potential to require more rigorous monitoring requirements for the oil and natural gas industry to ensure 98 percent reduction, such as those contained in NESHA³²¹ for the Petroleum Refinery Sector, 40 CFR part 63, subpart CC.³²² The EPA received comments on this solicitation stating that flares can be designed to achieve 98 percent control efficiency, but that variability in gas flow, pressure, and quality would present challenges to achieving 98 percent control efficiency

in the oil and natural gas industry. While the EPA did not determine whether 98 percent control efficiency flares were achievable, the Agency did perform a cost analysis of these flares and compared it to the impacts of a 95 percent reduction flare. The EPA concluded “that the additional reduction is not cost effective and would therefore not represent the BSER for affected sources requiring an emissions reduction through the use of a pollution control device.”³²²

The EPA performed this previous analysis primarily for storage vessels, which typically have lower emission levels than our representative associated gas well. Therefore, the EPA evaluated the incremental costs and emission reductions between 95 percent reduction and 98 percent reduction.

In the previous analysis,³²³ the EPA estimated the capital cost for a flare and all the monitoring equipment that would be required to achieve a 98 percent reduction to be \$430,000 (2019\$). Updating this estimate to mid-year 2024\$ results in an estimated capital cost of \$565,618.

The EPA further estimated that the annual costs would be 2.7 times higher than those for a flare achieving 95 percent reduction. Applying this factor to the estimated annual cost for a 95 percent flare cited above (\$47,411) results in an estimated annual cost of \$128,011. This represents an incremental annual cost of \$80,599. The incremental emissions reduction for the representative associated gas well (with baseline emissions of 343.6 tpy methane and 95.5 tpy VOC to install flares with 98 percent instead of 95 percent reduction would be 10.8 tpy methane and 2.86 tpy VOC. Accordingly, the resulting incremental cost effectiveness values are \$7,819 per additional ton of methane reduced and \$28,132 per ton of additional VOC reduced. Both of these values exceed the range the EPA has historically considered reasonable. For these reasons, and for the reasons stated in the December 2022 Supplemental Proposal, requiring associated gas emissions to be reduced by 98 percent is not the BSER.

³²² 87 FR 74702,74794 (December 6, 2022).

³²³ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. Background Technical Support Document for the Proposed New Source Performance Standards (NSPS) and Emissions Guidelines (EG) 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). U.S. Environmental Protection Agency, Office of Air and Radiation Office of Air Quality Planning and Standards. Research Triangle Park, North Carolina. October 2021.

iii. Proposed BSER Determination

Based on this evaluation of all technically viable options for managing associated gas from oil wells, the EPA concludes that neither onsite use, reinjection, nor other beneficial-use technologies satisfy the statutory criteria of being both adequately demonstrated and achievable. Emerging technologies likewise cannot serve as BSER because they are not yet sufficiently proven or commercially practical. In contrast, routing associated gas to a flare or other control device capable of achieving a 95-percent reduction in methane and VOC emissions is an adequately demonstrated, widely applicable, and cost-effective system, with performance and cost-effectiveness values that fall within ranges the Agency has historically considered reasonable. Additional analysis shows that a 98 percent reduction is potentially not achievable in field conditions and would impose incremental costs exceeding levels the Agency has found reasonable. Therefore, the record supports a conclusion that a 95-percent reduction in methane and VOC emissions represents BSER for associated gas.

iv. Proposed Standards and Presumptive Standards for Associated Gas

Therefore, for associated gas, the EPA is proposing that the associated gas must be routed through a closed vent system to a control device that achieves 95 percent reduction in emissions or greater, or route through a closed vent system to a flare that meets the applicable flare requirements. The EPA is proposing that owners and operators would be free to utilize compliance methods that achieve even greater reductions, including capturing and routing to a sales line 100 percent of their associated gas or using 100 percent of their associated gas for another beneficial purpose. The EPA is also proposing that if a portion of the associated gas is routed to sales or used for another purpose, the remaining portion must comply with the 95 percent standard. For example, if a company could route 40 percent of their associated gas to a sales line or for another potential purpose, the company would need to route the other 60 percent to a control device with a 95 percent reduction or to a flare.

b. Solicitation of Comment on Alternative to Revised BSER

The EPA is also seeking comment on an alternative approach which would maintain the current structure of the associated gas requirements (along with

Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Supplemental Background Technical Support Document (TSD) for the Proposed New Source Performance Standards (NSPS) and Emissions Guidelines (EG); Chapter 6 (Associated Gas). October 2022.

³²¹ 86 FR 63110, 63246 (November 15, 2021).

the BSER analysis from the March 2024 Final Rule) in both NSPS OOOOb and EG OOOOc while attempting to address the specific concerns raised by industry stakeholders through targeted regulatory amendments. (Question III.9b)

The EPA developed the 2024 BSER determination (*i.e.*, routing associated gas to a gathering or collection system to a sales line,) based on two proposals: the original November 2021 Proposal³²⁴ and the December 2022 Supplemental Proposed Rule.³²⁵ The Agency considered available information obtained prior to each of these proposals, as well as the information submitted to the EPA during the two separate public comment periods when developing the March 2024 Final Rule standards. The EPA solicits additional comments and requests additional information on whether and/or how keeping the existing structure of associated gas provisions but with added flexibilities, such as described below in Sections III.J.3.b.i and ii, could address typical issues for owners and operators attempting to route associated gas to a sales line but facing circumstances outside their control.

i. Temporary Flaring Allowances

As described in section III.J.2 of this preamble, industry representatives identified a number of situations where the temporary flaring allowances in 40 CFR 60.5377b(d)(3) are not sufficient, leaving operators faced with shutting in the wells or operating out of compliance. Many of these situations are beyond the control of the well owner and operator. The corresponding provisions in the EG model rule are 40 CFR 60.5391c(c)(3) and (4).

The EPA understands that implementation of the rule has led to the identification of situations not originally anticipated. The Agency recognizes recent industry feedback that the current timelines for addressing midstream service interruptions and gas quality issues may be too short in some circumstances. As a result, the EPA solicits comments on whether revisions to existing provisions could offer necessary flexibilities to address industry concerns.

Specifically, the EPA solicits comment on allowing an extension of the temporary flaring durations under 40 CFR 60.5377b(d)(3) and (4) and 40 CFR 60.5391c(c)(3) and (4) per incident. Right now, the temporary flaring allowance for interruption in service in the NSPS at (d)(3) is limited to 30 days per incident, and the temporary flaring

allowance for gas composition issues at (d)(4) is limited to 72 hours per incident. The EPA solicits comment on whether these timelines should be revised to be longer. For example, perhaps the temporary flaring allowance for interruption in service at (d)(3) should be revised to be 90 days per incident instead of 30, and/or the temporary flaring allowance for gas composition issues at (d)(4) should be 7 days instead of 3 (72 hours). The EPA solicits comments on what these timelines should be.

The Agency also solicits comment on whether and how to define “incident” for the purposes of 40 CFR 60.5377b(d)(3) and (4) as well as 40 CFR 60.5391c(c)(3) and (4). (Question III.9c) Further, the Agency solicits comment on if and how it should define the start of an “incident” for purposes of measuring the timelines in the regulations for 60.5377b(d)(3) and (4). One example could be to define the start of an incident as the moment an owner or operator receives a notification of interruption of service or gas composition issues and is unable to route their gas into a gas gathering line or collection system.

In correspondence with the industry, owners and operators did not offer specific alternative durations needed to address these temporary interruption incidents. The EPA is requesting comment and supporting information regarding the typical durations of midstream service outages and what an appropriate and reasonable timeline would be for resolving gas quality issues. (Question III.9d) Additionally, the Agency is soliciting comment on whether an annual temporary flaring limit should be included and, if so, what a reasonable limit would be. (Question III.9e) EPA is considering whether the inclusion of a temporary flaring limit for a calendar year would result in owners or operators having to shut-in the well if more service interruptions or gas quality issues persist. If inclusion of an annual temporary flaring limit would cause issues, EPA is considering whether owners or operators would be allowed to utilize these recurring situations as part of their technical infeasibility determination and certification to enable compliance via routing the associated gas to a flare or control device achieving 95.0 percent emissions reduction.

At the same time, EPA is considering whether allowing for flaring of associated gas under circumstances where there are multiple temporary interruption incidents could be deemed temporary, *i.e.*, owners and operators

could be required to cease flaring as soon as the service interruption or gas quality issue is resolved only to restart flaring at the start of the next incident. If extending temporary flaring duration, EPA would need to ensure that these provisions are used only as intended, the Agency could require notifications, and periodic records and reports for each temporary interruption incident. The EPA solicits comment on whether introducing appropriate notification, recordkeeping, and reporting requirements would serve as a robust guardrail to ensure that flaring remains a temporary practice.³²⁶ The EPA is soliciting comment on whether it could require that an initial notification be submitted to the Agency as soon as an owner or operator becomes aware of a temporary interruption incident that results in the need to flare, and if so, what documentation could be required to explain why no other compliance method under NSPS OOOOb or EG OOOOc is possible for controlling the associated gas. The Agency also solicits comment on whether to require an owner or operator submit a notification to the EPA upon resolution of the temporary interruption incident, and similarly, whether during the incident, the EPA should require periodic reports on the status of the temporary interruption incident and the steps being taken to resolve it or whether such notifications and periodic reports documenting these incidents should be required to be maintained as records. (Question III.9f) Additionally, the EPA requests comment on whether the Agency should require to include in annual reports information related to the temporary interruption incident (*i.e.*, when the temporary interruption incident started, circumstances related to the incident, and resolution status). The Agency is also soliciting comment on the appropriate frequency of periodic status reports related to the status of a temporary interruption incident, if commenters agree that EPA should require such reports. (Question III.9g)

ii. Oil Wells With Associated Gas That Do Not Have Access to Gathering Systems or Do Not Have the Ability To Utilize 100 Percent of the Associated Gas in Accordance With 40 CFR 60.5377b(a)

For the March 2024 Final Rule, the EPA recognized that owners and operators of new wells commencing construction prior to May 7, 2024,

³²⁶ Given the deregulatory nature of this possible revision, the EPA anticipates that any burden associated with what the solicitation suggests would be minimal in comparison with the current burden.

³²⁴ 86 FR 63110 (November 15, 2021).

³²⁵ 87 FR 74702 (December 6, 2022).

would have already determined their location and made commitments prior to the knowledge of the requirements in the March 2024 Final NSPS OOOOb provisions. Therefore, they may not have the ability to route all associated gas produced to a sales line or use it for another purpose as required by 40 CFR 60.5377b(a). Therefore, the March 2024 Final Rule NSPS OOOOb requirements allow the routine flaring of associated gas from these wells, provided the owner or operator demonstrates and certifies that it is not technically feasible to comply with any of the options in 40 CFR 60.5377b(a). The preamble to the March 2024 Final Rule included a robust discussion of the technical infeasibility determination, including numerous specific examples of potential reasons that could support such determination.³²⁷

The EPA assumed that owners and operators of wells commencing construction after the effective date of the March 2024 Final Rule would have adequate time to plan for compliance with one or more of the options in 40 CFR 60.5377b(a). The exception to this assumption applies to wells that commenced construction shortly after NSPS OOOOb was finalized. The Agency recognized that development plans may have been underway prior to the publication of the March 2024 Final Rule (even though they had not officially “commenced” construction), and that owners and operators in this group would need additional time for a sufficient phase-in period to adjust to the final standard, which differed from what the EPA had included in the December 2022 Supplemental Proposal. Therefore, the March 2024 Final Rule NSPS OOOOb requirements allowed owners and operators of wells that commenced construction after the final rule was effective to routinely flare for two years (until May 7, 2026) at which time they were required to comply with one or more of the options in 40 CFR 60.5377b(a).

Based on the information provided by industry representatives summarized in sections III.J.2.c and d of this preamble, the EPA acknowledges that the assumption that owners and operators of newly constructed wells could work out ways to comply with one or more of the options in 40 CFR 60.5377b(a) in all circumstances did not reflect the full range of operational scenarios that the industry encounters. Industry representatives have provided additional information and arguments that have better informed the Agency regarding details and complexities not

previously considered. For example, wells for which construction was commenced between May 7, 2024, and May 7, 2026, may have entered into agreements to connect to a gas gathering line or collection system, but construction of the system was not completed by the deadline, and the construction of these third-party systems was not under the control of the oil and gas well owner or operator. Also, the industry representatives pointed out the reality that third-party mid-stream companies are not likely to plan the construction of new gas gathering line or collection systems in an area before wells in that area are producing associated gas.^{328 329} Under the NSPS OOOOb requirements, however, new wells cannot operate unless they can either route all the associated gas to a gas gathering line or collection system to a sales line or use it for another purpose allowed in 40 CFR 60.5377b(a). The result is that potentially productive oil fields may go undeveloped.

A third situation that industry has brought to the EPA’s attention involves wells that are connected to a gas gathering line or collection system but experience frequent and recurring interruptions in service.^{330 331 332} As discussed in section III.J.3.a of this

preamble, the Agency is requesting comment on extending the duration allowed for temporary flaring under 40 CFR 60.5377b(d)(3) and (4) and 40 CFR 60.5391c(c)(3) and (4). Specifically, EPA is requesting supporting information on what flaring allowance duration might be needed in order to sustain production.

In addition, EPA recognizes that there may be situations where owners or operators are regularly able to route a portion of the associated gas produced to a gas gathering line or collection system, or to use a portion of the associated gas for another purpose identified in 40 CFR 60.5377b(a)(2), (3), or (4) but are not able to utilize 100 percent of the gas.

The EPA solicits comment on whether it is possible to address all of these scenarios by introducing a flexibility that would allow routine flaring in situations where it is technically infeasible to comply with any of the options in 40 CFR 60.5377b(a). One example of such approach would be to separate wells into two groups. The first group would include: wells in new areas where the construction of a gas gathering line or collection system is not yet underway; wells that are connected to a gas gathering line or collection system but experience frequent interruptions; wells that are connected to a gas gathering line or collection system that reduces capacity or ceases to operate; and wells that route some of their associated gas to a gathering system or use a portion of the associated gas for another purpose identified in 40 CFR 60.5377b(a)(2), (3), or (4), but are not able to find uses for 100 percent of the gas.

For this group of wells, the EPA could provide owners or operator the option to routinely flare (or route to a control device that achieves 95.0 percent reduction in emissions) if they demonstrate that it is technically infeasible to comply with 40 CFR 60.5377b(a). This proposed approach is consistent with the December 2022 Supplemental Proposal.³³³

The second group of wells would include those located in areas where a gas gathering line or collection system is either available or under development, and where the owner or operator has a contractual agreement to route 100 percent of the routed gas into a gas gathering line or collection system to a sales line once the system is ready to accept the gas. For these wells, the EPA could allow owners or operators to routinely flare the associated gas (or route to a control device that achieves

³²⁸ Continental Resources (2026a). Letter to the EPA Administrator. Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Request for EPA’s reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 CFR 60.5377b. April 23, 2026.

³²⁹ Holland & Hart. (2026). Letter Re: May 1, 2026, Guidance and April 30, 2026, Memorandum: Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells. Letter to Aaron Szabo, OAR Assistant Administrator from Emily C. Schilling, Holland & Hart. May 6, 2026.

³³⁰ Continental Resources (2026a). Letter to the EPA Administrator. Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Request for EPA’s reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 CFR 60.5377b. April 23, 2026.

³³¹ Chrod Energy (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR pt. 60, subpt. OOOOb: Reconsideration of the Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 17, 2026.

³³² Kraken Oil and Gas Partners LLC (2026). Letter Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 CFR part 60, subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 CFR 60.5377b(f). April 24, 2026.

³³³ 87 FR 74702 (December 22, 2026).

³²⁷ 89 FR 16888 (March 8, 2024).

95 percent reduction in emissions) until it can be routed to a gas gathering line or collection system to a sales line. The Agency could consider whether to include a limit on the duration an owner or operator may flare during pipeline construction, *e.g.*, 3 years from the time the well begins operation. The Agency is requesting comment on what constitutes an appropriate time frame for limiting routine flaring for new wells under this scenario. (Question III.9h) Owners and operators of wells in this group could be required to submit in their initial annual report the details of the contractual arrangement, as well as the schedule that outlines when compliance will be achieved. In each subsequent annual report, the owner or operator could be required to submit an update on the status of the effort, along with a detailed explanation of any delays in schedule. The EPA is also specifically requesting comment on whether separate requirements for this second group of wells, or whether the considered requirement for annual technical infeasibility determinations and certifications would achieve the same objective of requiring compliance with 40 CFR 60.5377b(a) when the gas gathering line or collection system is able to accept the associated gas produced. (Question III.9i)

K. Well Site Subcategorization

The EPA is proposing to subcategorize different types of well site affected and designated facilities to address petitioner concerns related to the burden of complying with the March 2024 Final Rule for certain types of well sites where the cost of compliance with the March 2024 Final Rule may be more than that subcategory of the industry could bear and survive. The Agency is co-proposing two different options for subcategorizing wells to address this issue: (1) subcategorizing by production volume (*i.e.*, having a subcategory for “marginal” wells); or (2) subcategorizing by well type (*i.e.*, having a subcategory for “conventional” wells). The EPA is proposing that the Agency could choose to finalize one of these options. Under either of these scenarios, the EPA would determine standards for the subcategory based on a BSER analysis that is specific to the subcategory. As described in the following section, in addition to evaluating the cost effectiveness on a cost per ton of emissions reduction basis as one metric of cost reasonableness, the Agency also evaluated the cost reasonableness of the proposed standards for each subcategory option (*i.e.*, for marginal wells and for conventional wells) by comparing the capital and on-going compliance costs

to the overall revenue less operating costs (*i.e.*, profits) at the site level. The EPA also evaluated whether the same proposed standards would be appropriate for conventional wells based on the analysis for marginal wells and the similarities between the two subgroups. Section III.K.1 of this preamble provides information regarding the first option, including the definition of marginal wells, how marginal wells have been addressed in past EPA NSPS rulemakings, petitioner concerns pertaining to compliance with the NSPS OOOOb and EG OOOOc for marginal wells, the EPA’s proposed requirements for emissions sources at marginal wells, and the rationale for the proposed emissions requirements. Section III.K.2 of this preamble provides information regarding the second option, including the definition of conventional and unconventional wells, petitioner concerns pertaining to compliance with the NSPS OOOOb and EG OOOOc for conventional wells, the EPA’s proposed requirements for emissions sources at conventional wells, and the rationale for the selected emissions requirements.

1. Option 1. Subcategorization of Marginal Wells

There is considerable diversity throughout the many different oil and natural gas wells, and well sites, across the country. One significant aspect of this diversity is related to the level of oil and/or gas production from each well, which can vary over the life of the well. An important subset of the industry are wells that have lower production levels. Low production wells (*i.e.*, wells with less than 15 barrels of oil equivalent per day) are the most numerous types of existing wells, comprising more than 78 to 80 percent of existing oil and natural gas wells in the United States. These wells accounted for approximately 7 percent of total U.S. oil and natural gas produced in 2024.³³⁴ These “low production wells” are frequently existing wells (existing sources subject to EG OOOOc) that are nearing the end of their productive life but continue to produce at low levels for a decade or more. Within the oil and natural gas industry, there are several commonly used terms to describe wells that produce less oil and/or gas that are used for a variety of reasons. Different industry groups and government entities can use slightly different terms, sometimes to describe the same or

similar wells, and sometimes to describe slightly different wells. Further, these terms can sometimes be used in conjunction with different defining criteria such as production-based thresholds and/or defined at the site level (which can consist of multiple individual wells) instead of the individual well level. The inconsistent use of terminology, and the associated defining criteria, can lead to confusion. For example, several state tax codes have different tax requirements for low production wells and often peg the applicability of those different requirements to a specific volume of production of oil and/or gas. Although the definition and requirements can vary, they tend to center around a threshold of a maximum daily average oil production of 15 barrels of oil or a maximum daily average gas production of 90 thousand cubic feet of gas per day (Mcf) over a set time period.³³⁵ For example, Colorado Title 39, Section 39–29–105(1)(b) exempts gross income from the sale of oil and gas produced from “any wells that produce fifteen barrels per day or less of oil and gas produced from wells that produce ninety thousand cubic feet or less of gas per day for the average of all producing days” for the taxable year. Similarly, the definition from the Energy Policy Act of 2005 (codified at 42 U.S.C. 15903) for a “marginal property” refers to an onshore unit, communitization agreement, or individual lease that produces, on average over the prior three production months, less than 15 barrels of oil per well per day or 90 million BTU of gas per well per day, considering only wells that produced on more than half of those days. However, many wells produce both oil and natural gas, which makes applying these criteria for low producing wells challenging. Barrel of Oil Equivalent (boe) is a common metric that is used to provide a standardized way to express energy content across different fuel types, allowing a comparison of oil and natural gas wells on an equal footing, as well as accounting for wells that produce both. Because oil is measured in barrels and natural gas in cubic feet, boe serves as a common metric that converts both oil and natural gas into a single, comparable unit. The conversion is straightforward: one thousand cubic feet of natural gas contains approximately one-sixth of the energy of a barrel of oil; therefore, 6,000 cubic feet of natural gas (6 Mcf) has the energy

³³⁴ U.S. Energy Information Administration (2025). The Distribution of U.S. Oil and Natural Gas Wells by Production Rate with Data Through 2024. U.S. Department of Energy (DOE). December 2025.

³³⁵ Colorado Title 39, Section 39–29–105(1)(b); Texas Tax Code § 201.059 (2025) (Credits for Qualifying Low-Producing Wells); Illinois Statutes Chapter 35, Revenue § 450/2–15.

equivalent of one barrel of oil. Accordingly, the criteria used to define a marginal well can alternatively be defined as a well with a maximum daily average oil and/or gas production level of 15 boe per day. By way of another example of how various terms for low production wells have been defined, the federal Internal Revenue Code defines a “stripper well”³³⁶ property,” with respect to any calendar year, as any property with respect to which the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year divided by the number of such wells is 15 barrel equivalents or less.³³⁷ This definition uses the boe metric but introduces the concept of providing a definition for an entire site or property instead of individual well.

Yet another term frequently used is “marginal well.” This term is generally used for wells that are marginal in terms of profitability. Although “marginal well” is a commonly used term, defining what classifies a well as economically marginal is challenging, as the profitability depends on a number of factors, including the cost of production and the price of oil and natural gas. However, the EPA notes that most stripper/low production wells are likely to be marginally profitable wells, (*i.e.*, marginal wells), and the term has become synonymous with low production wells.

³³⁶ “Stripper well” is another term used to describe low production wells.

³³⁷ 26 U.S.C. 613A.

After examining different terms and defining criteria for characterizing wells that produce less oil and/or gas, the EPA is proposing to define the terms “marginal well” and “marginal well site” based on a production-based threshold, for purposes of establishing a new subcategory within NSPS OOOOb and EG OOOOc. Specifically, the EPA is proposing to define “marginal well” for purposes of NSPS OOOOb and EG OOOOc as a well that produced less than or equal to 15 barrels of oil equivalent per day over the prior 12-month period and define the term “marginal well site” as a well site with only marginal wells and the total cumulative oil and natural gas produced from all the wells at the site is less than or equal to 15 barrels of oil equivalent per day over the prior 12-month period. And the Agency is proposing to create a new subcategory for marginal well sites such that if a well site meets this definition, then the well would be subject to a different group of standards as compared to a non-marginal well that does not meet this definition. CAA section 111(b)(2) authorizes the EPA to distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing standards of performance. Section III.K.1.d further discusses the proposed definition for marginal wells.

a. Marginal Wells in NSPS OOOO Series of Rulemakings

The topic of marginal wells has arisen in previous rulemakings for the oil and gas sector. Industry representatives have

repeatedly raised concerns about the economic impacts of complying with VOC and methane emission requirements for marginal wells, arguing that these requirements would force many wells to shut-in.³³⁸ They have also provided examples of marginal wells emitting less than higher producing wells.³³⁹ Other stakeholders, however, have submitted information showing that marginal wells can emit amounts comparable to, or even greater than, higher producing wells.³⁴⁰ As new information has emerged over the last 15 years, the EPA’s conclusions about how to regulate emissions from these marginal wells have evolved accordingly. Table 4 provides a brief summary of our previous rule rationale and outcomes related to marginal wells. Note that much of the focus in past rulemakings centered on the NSPS for fugitive emissions from leaking equipment components at marginal well sites.

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³³⁸ U.S. EPA (2016). EPA’s Responses to Public Comments on the EPA’s Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. May 2016. (EPA–HQ–OAR–2010–0505–7632); and U.S. EPA (2023a). Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule. November 2023. (EPA–HQ–OAR–2024–0358).

³³⁹ U.S. EPA (2023a). *See, e.g.*, pgs. I–2–9 to I–2–10.

³⁴⁰ EPA–HQ–OAR–2021–0317. *See, e.g.*, pgs. 28–29.

Table 4. Brief Summary of EPA Conclusions and Actions Related to Low Producing/Marginal Wells

Action / Rule	Outcome	Rationale
2011 Proposed ³⁴¹ and 2012 Final NSPS OOOO ³⁴²	No distinction between marginal wells and non-marginal wells.	Early rules focused on broader NSPS requirements; no special consideration or analysis specific to marginal wells. ³⁴³ Well site fugitive emissions not regulated.
2015 Proposed NSPS OOOOa ³⁴⁴	Proposed exemption from fugitive emissions monitoring and repair requirements for wells with production levels less than 15 boe/day.	The EPA indicated that marginal wells had lower fugitive emissions and were mostly owned by small businesses.
2016 Final NSPS OOOOa ³⁴⁵	The EPA did not finalize the proposed exemption. Required semiannual monitoring and repair for fugitive emissions from all wells, including marginal wells.	The EPA concluded that fugitive emissions levels correlate with equipment counts, not production levels; similar equipment at all sites. The EPA's view changed between proposal and final, such that at final, the EPA did not find that marginal wells had lower fugitive emissions.
2018 Proposed Revisions to 2016 NSPS OOOOa ³⁴⁶	Proposed less frequent monitoring (biennial) and repair for fugitive emissions at wells with production levels less than 15 boe/day.	New information indicated lower fugitive emissions and fewer components at lower production sites.
2020 Final Revisions to NSPS OOOOa ³⁴⁷	The EPA did not finalize the proposed biennial fugitive emissions monitoring provisions. Rather, wells with production levels less than 15 boe/day were entirely exempted from fugitive monitoring and repair requirements.	The EPA analysis showed monitoring for fugitive emissions costs outweighed benefits of the reduction of VOC emissions for low production wells. This analysis did not consider the cost effectiveness of methane reductions.
2021 Proposed NSPS OOOOb and EG OOOOc ³⁴⁸	Proposed to remove the fugitive emissions monitoring and repair requirements exemption in NSPS OOOOa for wells with production	The EPA explained that production level is not an appropriate threshold for determining monitoring

³⁴¹ 76 FR 52738 (August 23, 2011).³⁴² 77 FR 49490 (August 16, 2012).³⁴³ U.S. EPA (2011). Oil and Natural Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution. Background Technical Support Document for

Proposed Standards. July 2011. EPA-453/R-111/-002; U.S. EPA (2012). Oil and Natural Gas Sector: Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution. Background Supplemental Technical Support Document for the Final New Source Performance Standards. April 2012.

³⁴⁴ 80 FR 56593 (September 18, 2015).³⁴⁵ 81 FR 25824 (June 3, 2016).³⁴⁶ 83 FR 52056 (October 15, 2018).³⁴⁷ 85 FR 57398 (September 15, 2020).³⁴⁸ 86 FR 63110 (November 15, 2021).

	levels less than 15 boe/day. Proposed to instead set different fugitive monitoring and repair standards for fugitive emissions at well sites based on the calculated baseline site-wide methane fugitive emissions level.	requirements for fugitives; and that monitoring for fugitive emissions should be based on a required calculation of site-wide methane fugitive emissions. These emissions were determined, in part, through equipment /component counts and emission factors.
2022 Supplemental Proposed NSPS OOOOb and EG OOOOc ³⁴⁹	Withdrew the 2021 NSPS proposal that based fugitive emissions monitoring and repair requirements on calculated baseline site-wide methane fugitive emissions levels. Instead, proposed fugitive emissions monitoring requirements based on the number and type of equipment at the site.	Studies confirmed that fugitive emissions correlate with equipment counts, not production levels.
2024 Final NSPS OOOOb and EG OOOOc ³⁵⁰	The EPA finalized fugitive emissions monitoring and repair requirements based on equipment at the site. Sites with more equipment are subject to more frequent monitoring. The EPA also finalized the repeal of the exemption from fugitive emissions monitoring and repair requirements for marginal wells under NSPS OOOOa.	No compelling information was provided that suggested marginal well sites have fugitive emissions that are lower than non-marginal well sites. In particular, the DOE marginal well study reinforced that fugitive emissions are more correlated to equipment counts/equipment type than production. ³⁵¹ Further, the TSD for the final rule included a chapter on marginal wells explaining, in part, why the EPA opted to not regulate marginal wells differently. ³⁵²

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In the March 2024 Final Rule preamble, the EPA concluded that emissions, particularly fugitive emissions, are not strongly correlated with production levels. In that action, the Agency explained: “the EPA does not have compelling information that suggests production levels should provide the basis for consideration of different fugitive emissions requirements for well sites.”³⁵³ Since

that time, the EPA has continued to evaluate the available emissions data from marginal wells. A detailed discussion of our current understanding and conclusions on this topic is provided in section III.IV.J.1.e.

As noted above, most of the discussion about marginal wells in the context of the EPA’s NSPS and EG has focused on requirements for monitoring

and mitigating fugitive emissions. However, other emission sources at marginal wells are subject to NSPS OOOOb or will be subject to state or federal plans in accordance with EG OOOOc. In this action, instead of focusing on fugitive emission sources as in previous rulemakings, the Agency evaluated the full emissions profile of a marginal well site, considering all of those sources at a marginal well site, and evaluated whether emissions from the various sources were directly correlated with production. For some of these emission sources, such as fugitives, process controllers, pumps, compressors, and liquids unloading, there is not a strong correlation between production levels and emissions. For

³⁴⁹ 87 FR 74702 (December 6, 2022).

³⁵⁰ 89 FR 16820 (March 8, 2024).

³⁵¹ Bowers, Richard L. (2022). Quantification of Methane Emissions from Marginal (Low Production Rate) Oil and Natural Gas Wells. United States. <https://doi.org/10.2172/1865859>. (“DOE Marginal Well Study”)

³⁵² U.S. EPA. (2023b). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Background Technical Support Document (TSD) for the Final New Source Performance Standards (NSPS) and Emissions Guidelines (EG); Chapter 6 (Financial Analysis of Marginal Wells). November 2023.

³⁵³ 89 FR 16990 (March 8, 2024)

fugitives, controllers, and pumps, emissions correlate with the counts and types of equipment, as well as the maintenance practices, more so than with production levels. Likewise, for liquids unloading, emissions are related to the frequency of unloading events and unloading techniques rather than being directly correlated with production. However, for other emission sources, namely associated gas and storage vessels, there is a more defined relationship between production volumes and potential emissions.

For example, some emissions from storage vessels, particularly “working loss” emissions (*i.e.*, the VOC and methane releases from storage tanks that occur during filling or emptying operations where the liquid entering or leaving the tank displaces vapor), are directly dependent on the throughput of liquid through the vessel. Similarly, the potential for associated gas production is directly correlated to the amount of oil produced. Typically, the more oil that an oil well produces, the more associated gas it emits. Thus, for these emission sources, the EPA developed representative emission sources that correlate potential emissions levels to the level of production. The Agency further discusses the development of representative emission sources at marginal well sites, and how that factored into the EPA’s proposal to set standards for the new marginal well subcategory, in section IV.J.1.f.

While some newly drilled wells can be marginal wells, the vast majority of marginal wells are existing oil and gas wells (subject to EG OOOOc), whose production has declined over time because of reservoir pressure drops. While there are no provisions specific to marginal wells in the current versions of NSPS OOOOb or EG OOOOc (*i.e.*, there are no standards or presumptive standards where applicability or stringency depends on production level), there are less stringent provisions for smaller well sites, which do not have major production and processing equipment and are expected to have lower emissions. For example, at single wellhead sites, small well sites, and multi wellhead sites, as defined in NSPS OOOOb and EG OOOOc, the fugitive emission requirements are less stringent than those that apply at larger well sites (*i.e.* well sites with major production and processing equipment or centralized production facilities) because these smaller types of sites often have fewer fugitive emissions components and, by definition, do not have major production and processing equipment. Additionally, according to the March 2024 Final Rule, which

represents the existing requirements for storage vessels under NSPS OOOOb, emission controls are not required for storage vessels if emissions are less than 6 tpy VOC or 20 tpy methane.³⁵⁴ See 40 CFR 60.5365b(e). For EG OOOOc, under the existing requirements for storage vessels, only the 20 tpy methane threshold is included because the only pollutant regulated under those emission guidelines is GHG (expressed as a limitation on methane). See 40 CFR 60.5361c.³⁵⁵ The EPA expects that few, if any, storage vessels at marginal well sites would exceed the 20 tpy methane threshold.³⁵⁶ Under EG OOOOc, the current requirements for existing well sites with associated gas containing less than 40 tpy methane allow owners or operators to flare the gas without a demonstration of technical infeasibility. See 40 CFR 60.5391c(b). These provisions result in less stringent requirements for many marginal wells under NSPS OOOOb and EG OOOOc in the March 2024 Final Rule.

b. Petitioner Concerns Related to Marginal Wells for NSPS OOOOb and EG OOOOc Requirements

Despite the March 2024 Final Rule having less stringent requirements for smaller well sites, an industry petitioner and multiple industry groups have expressed significant concerns related to how the March 2024 Final Rule affects marginal well sites and requested that the EPA provide relief for these sources.³⁵⁷ According to the petitioner, oil and natural gas marginal wells are those most affected by the cost of regulation. They estimate that approximately 300,000 marginal wells, representing 0.4 percent of U.S. oil and gas production, will be shut-in as a result of the rule, primarily due to the requirements for process controllers and fugitive emissions monitoring.³⁵⁸ In Chapter 6 of the TSD for the March 2024 Final Rule, the EPA discussed the complexities associated with estimating

the number of wells that might be shut-in as a result of the rule.³⁵⁹ The EPA noted in the March 2024 Final Rule TSD that there are a number of reasons that marginal wells may continue to operate at low or even negative profits rather than be shut-in and plugged, including accounting practices that allow operators to delay the costs associated with plugging wells far into the future. The TSD also highlighted that the uncertainty surrounding future oil and natural gas production, commodity prices, tax treatments, and regulatory regimes, also contributes to the difficulty in predicting when or if an operator decides to shut-in and plug any given well and also makes it extremely difficult to determine the full impact of regulation on the financial status of marginal well owners.

Since the March 2024 Final Rule was promulgated, however, the EPA continued to explore the feasibility of estimating well shut-in and plugging decisions. Review of the academic literature on oil and gas asset valuation,³⁶⁰ combined with examples from industry of well-level financial analysis,³⁶¹ provided the EPA with confidence that, while it could not account for every factor relevant to the shut-in decision for operators, it could at least provide a credible estimate of the impacts of the March 2024 Final Rule and this proposed rule. Subsequent work has focused on developing a well shut-in decision methodology and parameterization that could be applied broadly to the universe of marginal well sites in the United States, using location-specific information (such as on severance tax rates and decommissioning costs) when possible. The resulting analysis framework has been applied in the RIA for this proposed rule, with the EPA estimating that between 100,000 and 200,000 marginal wells could cease operation as a result of the March 2024 Final Rule. The petitioner and other industry

³⁵⁴ 89 FR 16896–16897 (March 8, 2024).

³⁵⁵ 89 FR 16897–16898 (March 8, 2024).

³⁵⁶ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

³⁵⁷ Independent Petroleum Association of America (IPAA) (2024). Re: Provisions in EPA’s Final Rule “New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review” Creating Immediate Compliance and Implementation Issues; EPA–HQ–OAR–2017–0317.

³⁵⁸ IPAA (2024); see pg. 2.

³⁵⁹ U.S. EPA (2024) Chapter 6 of the TSD.

³⁶⁰ See, *e.g.*, Clarke, H.R. and Reed, W.J. (1990). *Oil-well valuation and abandonment with price and extraction rate uncertain*. Resources and Energy, 12(4): 361–382. [https://doi.org/10.1016/0165-0572\(90\)90029-I](https://doi.org/10.1016/0165-0572(90)90029-I), and Smith, J.E. and McCordle, K.F. (1996). *Valuing Oil Properties: Integrating Option Pricing and Decision Analysis Approaches*. Operations Research, 46(2): 198–217. <https://www.jstor.org/stable/222860>.

³⁶¹ See, *e.g.*, Riverside Energy comments on the November 2021 Proposal (EPA–HQ–OAR–2021–0317–0411), Michigan Oil and Gas Association comments on the December 2022 Proposal (EPA–HQ–OAR–2021–0317–2257), and Joint Industry Working Group analysis performed to assess proposed revisions to Colorado state oil and natural gas regulations (Exhibit A at <https://www.sos.state.co.us/CCR/Upload/AGOREquest/RegulatoryAnalysisAttachment2013-01215.PDF>).

groups provided various recommendations to the EPA for ways to alleviate the burden on marginal wells, including establishing different standards for fugitive emissions, associated gas, and process controllers.³⁶²

An industry group, the Michigan Oil and Gas Association (MOGA), provided similar information as the petitioner cited above to the EPA, generally expressing dissatisfaction with the standards as applicable to marginal wells.³⁶³ MOGA asserted that the requirements for fugitive emissions monitoring for marginal wells are unnecessarily and unreasonably expensive (especially OGI) and time-consuming. According to MOGA, marginal wells generate low and limited production revenue, and successful operation is dependent upon the ability to operate at low cost. MOGA further asserted that the March 2024 Final Rule does not take this into consideration and suggests that the EPA create a subcategory for marginal wells with requirements proportional to potential emissions and the cost of monitoring.

In addition to expressing concerns as part of a petition letter discussed earlier in this preamble, the National Stripper Well Association (NSWA) submitted additional information and met with EPA staff and officials on several occasions to further discuss their concerns and specific recommendations related to stripper wells.³⁶⁴ The NSWA defines “stripper well” as a well that produces less than an annual average of 15 barrels of oil per day (BOPD) or 90,000 cubic feet of gas per day (90 mcf/d) or 15 barrels of oil equivalent per day (BOED).³⁶⁵ According to NSWA, stripper wells operate with low profit margins, with an average stripper well generating approximately \$500 in annual net profit. The NSWA stated that the stripper well industry cannot bear any additional regulatory cost and stated that the current regulations will result in a decrease in domestic oil and gas production, tax revenue, and jobs. The NSWA also contended that

regulation of stripper wells would be a misallocation of Agency resources.

Using well production levels and oil and natural gas projected prices from the U.S. Energy Information Administration (EIA), the EPA’s BSER analysis for this proposed rule (as explained below in section IV.J.1.c) estimates an annual net profit of \$11,793 for the average marginal gas well and \$43,064 for the average marginal oil well (under a mid-range price scenario), where oil wells are defined as having a gas-to-oil ratio of 6,000 standard cubic feet per barrel or less and marginal wells are defined as producing 15 boe per day or less.³⁶⁶ Although considerably different than the values provided by NSWA, the EPA’s analysis still indicates that the March 2024 Final Rule has significant negative impacts on the marginal well portion of the oil and natural gas industry as noted above. In the following sections, the Agency discusses the revised approach for considering cost reasonableness of the proposed revised regulatory requirements for marginal well sites given the lower profits at marginal well sites.

c. BSER for Marginal Wells

CAA section 111(a)(1) defines “standard of performance” as a standard that reflects “the degree of emission limitation achievable through the application of the best system of emission reduction [BSER] 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.” Under the final EG OOOOc rule, States must submit plans which include standards of performance that reflect the degree of emission limitation achievable through application of the BSER for existing sources, as identified by the EPA in the EG. See 40 CFR 60.5363c(a)(4).

CAA section 111(a) does not provide specific direction to the EPA regarding what metric to use when “taking into account” costs for the BSER analysis, affording the EPA considerable discretion in choosing a reasonable

means of cost consideration.³⁶⁷ As described in the proposal for the 2016 Rule,³⁶⁸ the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) has explained that when setting standards under CAA section 111, the consideration of costs has included an evaluation of whether the cost of the standard would be “exorbitant,”³⁶⁹ “greater than the industry could bear and survive,”³⁷⁰ “excessive,”³⁷¹ or “unreasonable.”³⁷² These various formulations seek to describe the outer limits of cost considerations for BSER under CAA section 111 and for convenience in this rulemaking, as in previous rulemakings, the EPA will use reasonableness as the guide, so that a control technology may be considered the “best system of emission reduction . . . adequately demonstrated” if its costs are reasonable, but cannot be considered the BSER if its costs are unreasonable.³⁷³

While the EPA has proposed and finalized treating marginal wells differently in the past,^{374 375} in this action, the EPA is proposing to take a new approach, in the context of these oil and gas regulations, to assess whether compliance costs are reasonable for marginal well sites. In addition to evaluating the cost effectiveness on a cost per ton of emissions reduction basis for different control options at the source level, the Agency also evaluated the cost reasonableness of different control options based on the capital and on-going compliance costs compared to the overall revenue less operating costs (*i.e.*, profits) at the site level applicable to

³⁶⁷ See *Lignite Energy Council v. EPA*, 198 F.3d 930, 933 (D.C. Cir. 1999) (“Because section 111 does not set forth the weight that be should assigned to each of these factors, we have granted the agency a great degree of discretion in balancing them.”); *New York v. Reilly*, 969 F.2d 1147, 1150 (D.C. Cir. 1992) (similar); see also, *e.g.*, *Husqvarna AB v. EPA*, 254 F.3d 195, 200 (D.C. Cir. 2001) (finding EPA’s approach to considering costs reasonable “[b]ecause [CAA] section 213 does not mandate a specific method of cost analysis”).

³⁶⁸ 80 FR 56593, 56616 (September 18, 2015).

³⁶⁹ *Lignite Energy Council*, 198 F.3d at 933 (“EPA’s choice will be sustained unless the environmental or economic costs of using the technology are exorbitant”).

³⁷⁰ *Portland Cement Ass’n v. Train*, 513 F.2d 506, 508 (D.C. Cir. 1975).

³⁷¹ *Sierra Club v. Costle*, 657 F.2d 298, 383 (D.C. Cir. 1981) (noting the EPA’s conclusion that the industry’s “forecasted cost was not excessive and did not make the cost of compliance with the standard unreasonable”).

³⁷² *Id.*

³⁷³ EPA has taken a similar approach in prior rulemakings under CAA section 111. See, *e.g.*, 89 FR 16820, 16847 (March 8, 2024); 91 FR 1910, 1913 (January 15, 2026).

³⁷⁴ 80 FR 56612 (September 18, 2015).

³⁷⁵ 85 FR 57400 (September 15, 2020).

³⁶² IPAA (2024).

³⁶³ Geer, J., President & CEO, Michigan Oil and Gas Association (MOGA), (2025) Letter to Aaron Szabo, Assistant Administrator, Office of Air and Radiation, EPA, May 21, 2025. Proposed Revisions to the Methane Rule (OOOOb & OOOOc).

³⁶⁴ Montalban, P. Chairman, National Stripper Well Association and Bradley, S., Board Member, National Stripper Well Association. (2025). Letter to Jodi Howard, EPA, Group Lead, Fuels and Incineration Group, EPA. Subject: 0000b & 0000c Revisions per Multiple Meetings Between NSWA and EPA, July 29, 2025.

³⁶⁵ *Id.*

³⁶⁶ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

this subcategory of the industry. Although the EPA has not previously taken this exact type of “dual” evaluation approach for this sector, the Agency has evaluated the cost reasonableness of regulatory requirements using multiple metrics for this sector in other ways and in other sectors. For example, in the March 2024 Final Rule, in addition to evaluating the cost effectiveness of various control options, the Agency also evaluated the industry-wide compliance costs compared to revenue.³⁷⁶ As another example, in the January 2026 final rule entitled “New Source Performance Standards Review for Stationary Combustion Turbines and Stationary Gas Turbines,” the EPA evaluated costs using several different metrics, which had also been used in previous NSPS rulemakings, including total cost, cost as a percentage of capital cost, incremental cost-per-ton of pollutant reduced, and cost per unit of production.³⁷⁷ These examples illustrate that the Agency has a history of considering multiple cost metrics when the situation suggests that such a multifaceted assessment of costs would be appropriate. Assessing whether compliance costs might be excessive or exorbitant is not always an easy or straight-forward task. There can sometimes be complicated factors to consider, which necessarily requires that the EPA examine the issue of costs from multiple angles and with multiple lenses. As explained more below, such a multi-metric approach is appropriate here.

The basic approach for the evaluation in this proposal is summarized as follows: first, the EPA created representative well sites to characterize the production levels, equipment, and baseline emissions at typical marginal well sites; next, the Agency identified potential control options for each emission source at the representative marginal well site, and estimated the capital and annual costs, as well as the cost effectiveness values for each potential control at each emissions source; third, the EPA compared the anticipated costs of compliance for each potential control option to the estimated well site profits to assess cost reasonableness of the individual control option; fourth, the EPA developed regulatory alternatives that included different combinations of potential control options, considering cost effectiveness and cost reasonableness of the individual control options; finally, the EPA compared the total compliance

costs of the emissions control options for all of the emissions sources for each regulatory alternative considered at the representative sites to the total facility emissions reductions and the estimated facility profits at the representative site to assess the cost reasonableness of the combination of potential control requirements in each regulatory option considered. The following paragraphs describe how this proposed approach differs from historical approaches for oil and gas rules under CAA 111 and the EPA’s rationale for taking a new approach specifically for this subcategory of the oil and gas source category. Details of our evaluation are also provided in the subsequent sections of this preamble. More detailed descriptions and data are located in the Marginal Well TSD,³⁷⁸ available in the docket for this proposed rule.

In previous NSPS and EG rulemakings for the oil and natural gas industry, the EPA has evaluated reasonableness of control costs by examining different metrics. First, for individual emission sources (*e.g.*, fugitive emissions from leaking components, storage vessels, compressors), the Agency has previously weighed the estimated emission reduction that would be achieved by the control option against the costs of control and determined if the cost of control in relation to the emission reduction is reasonable. The common measure used for this evaluation is “cost effectiveness,” which is expressed as a cost per ton of emission reduction achieved.

While cost effectiveness on an individual emission source basis has historically been the primary factor in determining BSER for this industry, the EPA also has evaluated costs at a sector level by assessing the projected new capital expenditures required under each rule (compared to overall new capital expenditures by the sector) and the projected compliance costs (compared to overall annual revenue for the sector) if the rule were to require such controls.³⁷⁹ When the EPA has conducted such nationwide analyses, the Agency has considered whether the standards in the rule represent costs that are excessive, unreasonable, or greater than the industry could bear.

Previously, the EPA had not directly considered whether the costs of the standards are excessive or greater than each segment of the industry could bear. The Agency’s prior analyses were based on the whole onshore oil and natural gas production sector, even though there is a wide difference in the amount of production and associated revenue between different types of wells. Newly drilled sites may produce over 1,000 boe per day, while many older wells have production levels of less than 15 boe per day. While the revenue generated from selling oil and natural gas differs greatly between these lower and higher production sites, the costs of emissions controls are often largely the same. For instance, the cost to install the infrastructure to route associated gas to a sales line is substantially the same regardless of the amount of oil and associated gas that is produced from a site. Due to these circumstances, the emissions control costs for sites producing less oil and natural gas represent a much larger share of the revenue generated for a marginal well site than for a site with high production volumes. Put another way, the oil and natural gas industry, as a whole, includes a very wide range of operations such that certain costs may be reasonable for some regulated entities and simultaneously unreasonable for others. The EPA’s historic approach to considering industry-wide costs did not account for these real-world differences that are unique to this industry considering the very large number of sources in the industry. In reality, this particular industry has sub-industries, or select portions of the larger industry, that operate very differently from the larger industry. To account for the divergent revenues of these different oil and gas site types, in this proposal, the EPA is both evaluating cost effectiveness on a cost per ton of emissions reduction basis for each control option at the source level and cost reasonableness based on the capital and ongoing compliance costs compared to overall revenue less operating costs (*i.e.*, profits) for this subcategory of the industry (*i.e.*, marginal wells). In this action, the Agency is proposing that for a control option to be considered BSER, the associated costs would have to be reasonable under both cost metrics.

Additionally, the EPA has historically assessed the cost effectiveness of potential standards for oil and natural gas sources (for all past NSPS and EG for oil and gas) on a particular type of equipment or process in isolation, *i.e.*, without consideration of the compliance costs of co-located equipment integral to

³⁷⁶ 89 FR 16847 (May 8, 2024).

³⁷⁷ 91 FR 1935 (January 15, 2026).

³⁷⁸ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

³⁷⁹ 89 FR 16863–68 (March 8, 2024).

production. This approach for this industry resulted in cases wherein some control options appeared cost reasonable in isolation. However, owner/operators that are subject to the NSPS and EG do not just own and operate one isolated piece of equipment or process. An owner/operator in this industry likely has to bear the compliance costs of multiple standards simultaneously. For example, at an individual oil well site an owner/operator might be subject to five different standards: (1) fugitives monitoring, (2) associated gas, (3) pneumatic pumps, (4) process controllers, and (5) storage vessels. As such, under this scenario, the particular owner/operator would have to pay to implement all five standards. The EPA has previously determined for this industry that each standard was cost reasonable in isolation with little regard to the total, cumulative, compliance costs that the NSPS or EG imposed on the owner/operator.³⁸⁰ As explained more below, the approach that the EPA is proposing here seeks to correct this oversight for marginal wells, where this issue matters most because profit margins can be very small, by considering the total cumulative costs that the oil and gas regulations are imposing on those owners and operators. The EPA proposes that this is a better way to assess costs in the BSER analysis for the marginal well subcategory of the industry.

Because the marginal well subsector of the onshore oil and natural gas production sector operates under distinct economic conditions, such that the traditional cost effectiveness approach may not fully represent the potential impact on this subsector, the EPA is proposing that it is appropriate to consider the cost reasonableness of the potential standards at the site-level, instead of piecemeal. As previously noted in section III.K.1.b, the EPA estimates that between 100,000 and 200,000 marginal wells could cease operations due to the costs of complying with the NSPS OOOOb or EG OOOOc. In light of these concerns, the Agency is including consideration of the total compliance costs in relation to profitability on a site basis in the BSER analysis for marginal well sites. The EPA proposes that this approach to cost reasonableness for purposes of the BSER analysis is more appropriate for this NSPS and EG for marginal wells because it allows the Agency to fully account for all compliance costs imposed on the owner/operator of these particular emissions sources and to

compare those costs to the distinct economics of marginal well sites. Further, by incorporating profitability into the cost consideration for marginal wells, the EPA can more accurately assess the reasonableness of the total cost of compliance for this segment of sources relative to the guidelines that courts have outlined in CAA section 111 caselaw. Put another way, incorporating profitability into the cost prong of the BSER analysis here allows the Agency to more accurately characterize whether a particular cost is exorbitant, excessive, or greater than this subcategory of the industry (marginal wells), could bear and survive. By way of a simplified example, a total NSPS compliance costs of \$100 per year would objectively not be more than an industry could survive if the average source in that industry generated \$10,000,000 in profit each year. However, if the average source generated only \$90 in profit each year, then, depending on the circumstances and any relevant related facts, the EPA might conclude that same \$100 in compliance costs was more than the industry could bear and survive.

A key aspect of this marginal well BSER analysis is the consideration of the profitability of a representative well site to assess cost reasonableness. To assess cost reasonableness, the EPA calculated the expected revenue for different levels of production and estimated the associated operating costs and profit levels. Specifically, the Agency estimated low-, high-, and mid-range profit levels for different production levels of marginal wells for both oil wells and gas wells. The different profit levels were based on different pricing scenarios for oil and natural gas. The EPA recognizes there are numerous uncertainties associated with these pricing scenario estimates and is requesting comment on this aspect of the analysis. (See section III.IV.J.1.i.).

For the BSER analysis, the EPA created representative well sites to characterize the production levels, equipment, and baseline emissions at marginal well sites. Next, the EPA identified potential control options for each emission source at the representative marginal well site, and estimated the capital and annual costs, as well as the cost effectiveness values for each control option at each emissions source. Third, the EPA then compared the annual costs of individual control options to the profit levels of marginal wells. In instances where the annual costs for just one control for one source type were relatively high relative to the expected profits, the EPA removed the control option from further

consideration as the BSER because the Agency is proposing to determine that the costs are unreasonable under this metric. For example, for oil well sites with average production levels less than 15 boe/day, the estimated cost of routing associated gas to a sales line represented over 200 percent of the estimated profits for the mid-range pricing option, and over 150 percent of the estimated profits for the highest pricing option (see table 8 in this preamble for a comparison of costs in the March 2024 Final Rule and see the Marginal Well TSD for further details on the analysis of costs). The EPA therefore ruled out this control option for associated gas from the BSER analysis because the costs for this control option are unreasonable (the costs are more than the sub-industry of marginal wells can bear) even before considering the costs of controls for other sources at the site.

Owners and operators recognize revenue and profits at the site level, and make the decision whether to shut-in, or continue to operate, the well(s) at a site. Accordingly, the EPA next combined the control options for all emission sources at a well site previously covered by the NSPS and EG into site-wide regulatory alternatives. The Agency calculated the total site-wide capital and annual compliance costs of the control options considered, as well as the total site-wide emissions reductions and cost effectiveness. The EPA then compared the total annual compliance costs for the regulatory options considered for both a representative marginal well site and a representative marginal well site with major production and processing equipment (a "large well-site") to the profit levels for marginal wells. The Agency proposes to determine the BSER based on the combination of emissions reductions and cost effectiveness, at both the individual control level and the site-level, and how total site-wide annual compliance costs compare to estimated annual profits for the representative site.

The EPA recognizes that there is substantial variation in the equipment and operations at oil and natural gas well sites, even for sites with similar production levels. This representative site evaluation considers these differences by using weighted averages of the number and types of emission sources present and other factors.³⁸¹ By

³⁸⁰ See, e.g., 89 FR 16827, 16867 (March 8, 2024).

³⁸¹ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG).

using weighted averages, the EPA can evaluate the impact of different options on nationwide emissions reductions, not just the impact for a particular scenario. The EPA based these weighted averages on data, where available, or on the EPA's estimates based on knowledge of the industry.³⁸²

Additionally, the EPA requests comment on the appropriate consideration of "energy requirements" and whether the energy impacts from curtailed production of oil and natural gas in the United States allows treating marginal and conventional wells differently. (Question III.10a)

d. Proposed Subcategory for Marginal Wells

CAA section 111(b)(2) authorizes the EPA to distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing standards of performance. In this action, to distinguish sources within the crude oil and natural gas source category that have lower oil and gas production rates, the Agency proposes to create a new subcategory within the crude oil and natural gas category for marginal well sites under NSPS OOOOb. The EPA also proposes to create a corresponding subcategory for existing marginal wells sites under the EG of OOOOc. In order to evaluate and establish separate standards for this subcategory of marginal well sites, the EPA must establish definitions for "marginal wells" and "marginal well sites." The Internal Revenue Code, in 26 U.S.C. 613A(c)(6)(E), defines a "stripper well property," with respect to any calendar year, as any property with respect to which the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year divided by the number of producing wells is less than 15 boe. The production level used in this stripper well definition of 15 boe/day is a long-recognized criterion in the oil and natural gas industry. Using a production-based definition, like that in the "stripper well" definition above, provides a clear, measurable, and quantifiable metric. Thus, it is well

understood in the industry."³⁸³

Therefore, the EPA is proposing to base the definition of "marginal well" on these established concepts. However, the Agency proposes a slightly different approach to the definition of a marginal well site than the definition of stripper well property used in the Internal Revenue Code. In this action, the EPA is proposing to define a marginal well site as a well site that has a production below the threshold of 15 boe/day total for all wells at the well site. The Agency considers that establishing a definition at the site level is necessary to establish emission controls for equipment located at a marginal well site, such as process controllers and pumps, which service more than one well at the site. A site level definition is also consistent with the EPA's approach to evaluating BSER for this oil and natural gas production source subcategory, where the Agency is considering site-level compliance costs and profits. In addition, the EPA also used the same threshold in a previous action on NSPS OOOOa. Accordingly, the Agency is proposing definitions for both a "marginal well" and a "marginal well site", where a marginal well is a well that produced less than or equal to 15 barrels of oil equivalent per day over the prior 12-month period, and marginal well sites are well sites with only marginal wells and where the total oil and natural gas produced from all the wells at the site is less than or equal to 15 boe per day over the prior 12-month period.

The EPA proposes a marginal well site subcategory that is defined as well sites producing 15 boe/day or less of oil and/or gas, but the Agency recognizes that there may be meaningful differences between marginal well sites producing at or near 15 boe/day and those producing substantially less. Certainly, profits decrease as production decreases, as well as the emissions for the sources that are more closely correlated with production levels (*e.g.*, associated gas, storage vessels). In addition, smaller, lower production wells often have fewer process units and less equipment, which results in less emissions from sources such as fugitive components and controllers when compared to larger production sites that have more controllers and more equipment to monitor for fugitives. While the EPA is proposing a single marginal well subcategory that is based on production level, the Agency is also

requesting comment on an alternative approach that would create two separate subcategories: one for marginal well sites with oil and/or gas production levels between 6 and 15 boe/day, and another for marginal well sites with oil and/or gas production levels of less than 6 boe/day. This is discussed in detail in section III.J.1.1 of this preamble.

e. Profile of Marginal Wells in the United States

i. Population and Economic Profile

Marginal wells account for a large share of the nation's well count but only a small share of total production. According to the Energy Information Administration, out of a total of 918,000 active U.S. wells in 2024, approximately 717,000 were marginal wells.³⁸⁴ This means that marginal wells account for approximately 78 to percent of all wells nationwide. These wells accounted for approximately 7 percent of total U.S. oil and natural gas produced in 2024.³⁸⁵ Based on our analysis of Enverus data, the EPA estimates that oil and gas wells in 2023 were owned and operated by more than 11,000 unique operators.³⁸⁶ Most marginal wells are owned by firms that also operate many other wells. For example, 51.3 percent of all marginal wells in the U.S are owned by only 127 firms that operate 1,000 or more wells each. At the same time, most firms are small operators. Over 65 percent of firms (7,320 firms) own ten or fewer oil and gas wells. These firms own 3.2 percent of all marginal wells in the U.S. and account for 1.9 percent of all marginal well production.

ii. Emissions From Marginal Wells

While marginal wells account for a relatively small percentage of domestic production of oil and natural gas, recent studies suggest that their contribution to methane emissions from oil and natural gas production is much greater.^{387 388 389}

³⁸⁴ U.S. Energy Information Administration (2025). The Distribution of U.S. Oil and Natural Gas Wells by Production Rate with Data Through 2024. U.S. Department of Energy. December 2025.

³⁸⁵ *Id.*

³⁸⁶ Enverus accessed on October 25, 2026.

³⁸⁷ Deighton, J.A., Townsend-Small, A., Sturmer, S.J., Hoschouer, J., & Heldman, L. (2020). Measurements show that marginal wells are a disproportionate source of methane relative to production. *Journal of the Air & Waste Management Association*, 70(10), 1030–1042. <https://doi.org/10.1080/10962247.2020.1808115>.

³⁸⁸ Bowers, Richard L. (2022) Quantification of Methane Emissions from Marginal (Low Production Rate) Oil and Natural Gas Wells. United States. <https://doi.org/10.2172/1865859>.

³⁸⁹ Omara, M., Zavala-Araiza, D., Lyon, D.R. *et al.* Methane emissions from US low production oil and natural gas well sites. *Nat Commun* 13, 2085 (2022). <https://doi.org/10.1038/s41467-022-29709-3>.

40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

³⁸² U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

³⁸³ Letter from the Producers Association to Ms. Jodi Howard, EPA. September 24, 2025. Re: Provisions in EPA's Final Rule "New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review."

On a national scale, the DOE marginal well study estimated that marginal wells account for $1,000,000 \pm 140,000$ tpy, or roughly 50 percent of total methane emissions from oil and gas production.³⁹⁰ This is consistent with the EPA's estimates of the proportion of total methane emissions from all onshore oil and natural gas production attributed to marginal wells (approximately 60 percent) on a national basis over the same time period.³⁹¹ On a per well basis, this equates to 1.3 ± 0.2 tpy of methane per well, according to the U.S. DOE marginal well study. Similarly, the EPA estimated that approximately 50 percent of VOC emissions from onshore production is from marginal wells.³⁹² The EPA notes that the U.S. DOE marginal well study did not include emissions from some sources, particularly intermittent sources like liquids unloading; thus, the emissions reported in that study are lower than what the Agency estimates for a representative model well.

Other studies make similar conclusions regarding the population, production, and emissions from marginal wells, such as the Omara, *et al.* study, which indicates that 80 percent of U.S. oil and natural gas production sites were marginal well sites in 2019.³⁹³ On a production basis, the Omara, *et al.* study reports that marginal well sites account for less than 6 percent of the nation's oil and natural gas output in 2019. Consistent with the U.S. DOE marginal well study, Omara *et al.* also

estimates that marginal wells represent about 50 percent of all methane emissions from oil and natural gas well sites.

According to the U.S. DOE marginal well study, out of the estimated 783,000 marginal wells nationwide, 420,000 are natural gas producing marginal wells and 363,000 are oil producing marginal wells.³⁹⁴ On a production basis, marginal natural gas wells produce an estimated 460,000,000 boe/yr and marginal oil wells produce an estimated 320,000,000 boe/yr. From an emissions perspective, Omara *et al.* estimate that natural gas producing marginal wells account for the majority of methane emissions from marginal wells at $640,000 \pm 80,000$ ton/yr (or 64 percent of total marginal well methane emissions) and oil producing marginal wells emit $360,000 \pm 50,000$ ton/yr (or 36 percent of total marginal well methane emissions).³⁹⁵

Methane and VOC emissions from oil and natural gas producing marginal wells originate from equipment that is part of oil and natural gas production operations such as wellheads, storage vessels, process controllers, pumps, separators, dehydrators, compressors, and flares. Some equipment such as wellheads, storage vessels and separators are the more common types of equipment found at a well site. The U.S. DOE marginal well study indicated that these same types of equipment—wellheads, separators, and tanks—represent the largest and most frequently observed sources of emissions in all regions.³⁹⁶ The U.S. DOE marginal well study concluded that emissions from marginal wells were not strongly correlated with production and were instead most strongly correlated with major equipment count. That study also observed a highly skewed distribution of methane emissions, with the top 10 percent of emitting sources contributing 90 percent of the total methane emissions observed. Most of the top emitting sources in the study were due to emissions from malfunctioning or poorly maintained equipment. This is consistent with other studies, including studies of VOC

emissions from marginal wells, which showed similar skewed distributions and weak or no correlation with production.³⁹⁷

f. Marginal Well Representative Emission Sources

As noted in section III.J.1.c, the EPA began the marginal well BSER analysis by creating representative emission sources to characterize the production levels, equipment, baseline emissions, and the impacts of the March 2024 Final Rule at marginal well sites. The Agency built these representative emission sources from the individual affected/ designated facilities (*i.e.*, sources of emissions) covered by NSPS OOOOb or EG OOOOc that may be present at marginal well sites. Specifically, the emission sources that may be present at marginal well sites are:

- fugitive emissions components,
- process controllers,
- pumps,
- associated gas (at oil well sites only),
- storage vessels,
- sweetening units, and
- liquids unloading (at gas wells only).

Note that the EPA excludes compressors (centrifugal and reciprocating) located at all well sites because they are not subject to the March 2024 Final Rule requirements, and thus the Agency did not include them in the marginal well site representative facilities. The Agency does not include well completions in the marginal well site representative facilities, as operators conduct well completions prior to a determination of whether a well is a marginal well (or is continuing to be a marginal well). Thus, the EPA is proposing that all well completions will continue to follow the provisions in 40 CFR 60.5375b prior to determining whether the well meets the definition of a marginal well.

There are four types of well sites addressed in NSPS OOOOb and EG OOOOc for purposes of the fugitive monitoring and repair requirements. These are summarized in table 5.

³⁸⁷ Deighton, J.A., Townsend-Small, A., Sturmer, S.J., Hoschouer, J., & Heldman, L. (2020). Measurements show that marginal wells are a disproportionate source of methane relative to production. *Journal of the Air & Waste Management Association*, 70(10), 1030–1042. <https://doi.org/10.1080/10962247.2020.1808115>.

³⁸⁸ Bowers, Richard L. (2022) Quantification of Methane Emissions from Marginal (Low Production Rate) Oil and Natural Gas Wells. United States. <https://doi.org/10.2172/1865859>.

³⁸⁹ Omara, M., Zavala-Araiza, D., Lyon, D.R. *et al.* Methane emissions from US low production oil and natural gas well sites. *Nat Commun* 13, 2085 (2022). <https://doi.org/10.1038/s41467-022-29709-3>.

³⁹⁰ Bowers, Richard L. (2022). Quantification of Methane Emissions from Marginal (Low Production Rate) Oil and Natural Gas Wells. United States. <https://doi.org/10.2172/1865859>.

³⁹¹ U.S. EPA. (2023). Regulatory Impact Analysis of the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. December 2023. EPA–452/R–23–013.

³⁹² *Id.*

³⁹⁴ Bowers, Richard L. (2022). Quantification of Methane Emissions from Marginal (Low Production Rate) Oil and Natural Gas Wells. United States. <https://doi.org/10.2172/1865859>.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ Deighton, J. A., Townsend-Small, A., Sturmer, S. J., Hoschouer, J., & Heldman, L. (2020). Measurements show that marginal wells are a disproportionate source of methane relative to production. *Journal of the Air & Waste Management Association*, 70(10), 1030–1042. <https://doi.org/10.1080/10962247.2020.1808115>.

Table 5. Summary of NSPS OOOOb and EG OOOOc Well Site Types

Well Type	Definition³⁹⁸
Single wellhead only well site	A wellhead only well site that contains only one wellhead and no major production and processing equipment. ^a
Small wellsite	A well site that contains a single wellhead, no more than one piece of certain major production and processing equipment, and associated meters and yard piping. Small well sites cannot include any controlled storage vessels (or controlled tank batteries), control devices, natural gas-driven process controllers, or natural gas-driven pumps.
Multi-wellhead only well site	A well site that contains two or more wellheads and no major production and processing equipment. ^a
Large well site ^b	A well site that includes one or more controlled storage vessels or tank batteries, one or more control devices, one or more natural gas-driven process controllers or pumps, or two or more of the following: reciprocating or centrifugal compressors, glycol dehydrators, heater/treaters, separators, and uncontrolled storage vessels or tank batteries collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water.

^a Major production and processing equipment means reciprocating or centrifugal compressors, glycol dehydrators, heater/treaters, separators, control devices, natural gas-driven process controllers, natural gas-driven pumps, and storage vessels or tank batteries collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water, for the purpose of determining whether a well site is a wellhead only well site.

^b Large well site is not a defined term in NSPS OOOOb or EG OOOOc. For the purpose of this preamble, the EPA is utilizing the term “large well site” to characterize the type of site described in the fugitive emission standards in NSPS OOOOb and the presumptive standards in EG OOOOc (summarized above in table).³⁹⁹

The EPA created representative marginal well model plants for each of the well site types described in table 5. These model plants contain representative equipment and processes (emission sources), as applicable. The following sections describe the emission sources that may be present at well sites and that are thus included in our model plants, along with an estimate of the baseline uncontrolled emissions for a representative source.

i. Fugitive Emissions Components

Fugitive emissions can, in general terms, be understood as unintended emissions that can occur from a range of components at any time due to leaks or equipment malfunctions.⁴⁰⁰ Collectively, these emissions constitute

one of the largest sources of methane and VOC at marginal well sites, although the magnitude of these emissions can also vary widely across different facilities and over time. In NSPS OOOOb, a fugitive emissions component is defined as “any component that has the potential to emit fugitive emissions of methane or VOC at a well site, centralized production facility, or compressor station, such as valves (including separator dump valves), connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems not subject to 40 CFR 60.5411b, thief hatches or other openings on a storage vessel not subject to 40 CFR 60.5395b, compressors, instruments, meters, and yard piping.”⁴⁰¹ The definition in EG

OOOOc is the same, with the exception of only pertaining to emissions of methane and referencing 40 CFR 60.5411c and 60.5396c instead of 40 CFR 60.5411b and 60.5395b, respectively. Table 6 provides the number of components at each representative marginal well site and corresponding emissions estimates for the site. As noted in footnote b to table 5, the fourth well site type, well sites that contain major production and processing equipment will henceforth also be referred to as “large well sites.” Details of these well sites, the number of components, and the baseline emission levels are provided in the Marginal Well TSD, available in the docket for this proposed rule.

³⁹⁸ See 40 CFR 60.5430b, 60.5430c.

³⁹⁹ See 40 CFR 60.5397b(g)(1)(iv), 60.5397c(g)(1)(iv)

⁴⁰⁰ NSPS OOOOb and EG OOOOc also contain specific definitions of the term “fugitive emissions” for purposes of certain regulatory provisions. See 40

CFR 60.5430b (fugitive emissions definition) and 40 CFR 60.5430c (same).

⁴⁰¹ 40 CFR 60.5430b (fugitive emissions component definition).

Table 6. Fugitive Emissions Marginal Well Representative Facilities

Marginal Well Site Type	Number of Components	Baseline Methane Fugitive Emissions (tpy)	Baseline VOC Fugitive Emissions (tpy)
Single Wellhead Only Well Site	112	1.37	0.38
Small Well Site	157	1.87	0.52
Multi-Wellhead Only Well Site	220	2.44	0.68
Large Well Site	385	4.84	1.35

ii. Process Controllers

Process controllers are automated instruments used for maintaining a process condition, such as liquid level, pressure, pressure difference, or temperature. In the oil and natural gas industry, many process controllers are powered by pressurized natural gas and emit methane and VOC-containing natural gas to the atmosphere. Process controllers may also be powered by electricity or compressed air, and these types of controllers do not use or emit natural gas.

Natural gas-driven process controllers can be categorized based on the emissions pattern of the controller. Some controllers are designed to have the supply-gas provide the required pressure to power the end-device, and the excess amount of gas is emitted. The emissions of this excess gas are referred to as “bleed,” and this bleed occurs continuously. Controllers that operate in this manner are referred to as “continuous bleed” process controllers. These controllers can be further categorized based on the amount of bleed they are designed to have. Those that have a bleed rate of less than or equal to 6 scfh are referred to as “low bleed,” and those with a bleed rate of greater than 6 scfh are referred to as “high bleed.” Another type of controller is designed to release gas only when the process parameter needs to be adjusted by opening or closing the valve, and there is no venting or bleeding of gas to the atmosphere when the valve is stationary. These types of controllers are referred to as “intermittent vent” process controllers. A third type of process controller, a self-contained process controller, is a controller that routes the exhaust gas into the downstream piping instead of the atmosphere. Emissions from natural gas-driven process controllers are primarily dependent on the number of controllers at a site, the designed bleed rate (for continuous bleed controllers), and the

condition of the controller and frequency of malfunction. Emissions from controllers are not directly tied to production levels.

The EPA does not expect that there are natural gas-driven controllers at every marginal well site. For sites that do have such controllers, the Agency assumed there would be two intermittent vent controllers based on available data regarding the number and predominant type of process controllers at well sites.⁴⁰² The EPA estimated the annual emissions to be 2.66 tpy of methane and 0.74 tpy of VOC per marginal well site. Details of the model plant development and baseline emission level are provided in the Marginal Well TSD, available in the docket for this proposed rule.

iii. Pumps

In the oil and natural gas industry, operators frequently use pumps to inject precise amounts of chemicals into a process stream or to circulate glycol. These pumps may use natural gas, compressed air, or electricity as a power source. Of these pumps, those that are pneumatic units driven by natural gas emit methane and VOC to the atmosphere as part of normal operation. In many situations across all segments of the oil and gas industry, operators often rely on natural gas-driven pneumatic pumps where electricity is not readily available. Emissions from natural gas-driven pumps are primarily dependent on the number of pumps at a site and not directly tied to production levels. Based on available data regarding the number of pumps at well sites, the EPA does not expect that there are natural gas-driven pumps at every

marginal well site.⁴⁰³ For those sites that do, the Agency assumed there would only be one such pump, based on the available data.⁴⁰⁴ The EPA estimated the annual emissions to be 3.46 tpy of methane and 0.96 tpy of VOC. The Marginal Well TSD, available in the docket for this proposed rule, provides details of the model plant development and baseline emission levels.

iv. Oil Well Associated Gas

Associated gas is natural gas that originates at wells operated primarily for oil production that is released from the liquid hydrocarbon during the initial stage of separation after the wellhead. Associated gas is one of the emission sources where emissions are primarily dependent on production levels. More specifically, the volume of associated gas is related to the amount of gas extracted along with the oil or condensate. Put another way, generally speaking and subject to some caveats, the more oil that a well produces, the higher the potential for associated gas emissions there will be from that well because the crude oil is mixed with some natural gas that contains VOCs and methane. If a well site is producing a small amount of oil, usually the uncontrolled VOC and methane emissions from the natural gas associated with that oil will likewise be small. If, however, the well site is producing a very large amount of oil, then usually there will also be higher amounts of associated natural gas, and the uncontrolled emissions from that gas would usually be higher. Operators typically route the mixture of oil and natural gas to a separator, which sends the liquid to a storage vessel. If the gas exiting the separator is of sufficient quality and quantity, operators generally route it to a gas line, provided there is

⁴⁰² See Docket ID. No. EPA-HQ-OAR-2025-1348 (Industry data collected by the EPA through an information collection request (ICR) distributed in 2024 for the NESHAP (“2024 Company Phase Two ICR Facility Responses and Supplemental Information”).

⁴⁰³ Industry data collected by the EPA through an information collection request (ICR) distributed in 2024 (“2024 ICR”).

⁴⁰⁴ *Id.*

a sales line nearby that has the capacity to accept the gas and that the gas meets quality specifications. In the absence of a sales line, operators may use the gas for another purpose, such as for onsite fuel (provided the quality is adequate) or recover the gas and reinject it into the same well or another well. If none of these options are feasible, operators typically flare or vent the associated gas.

The EPA estimates that the annual associated gas methane emissions from the average marginal well are 10.9 tpy of methane and 3.0 tpy VOC. As previously noted, the amount of associated gas is directly correlated to production levels. The Agency estimates the methane emissions from associated gas could range from around 2 tpy from a well site with 1 boe per day to over 100 tpy from a well site with 15 boe per day and that VOC emissions could range from 0.6 tpy from a well site with 1 boe per day to around 29 tpy for a well site with 15 boe per day. The Marginal Well TSD provides detailed explanations of these estimates.⁴⁰⁵

v. Storage Vessels

Storage vessels at oil and natural gas well sites contain crude oil, condensate, intermediate hydrocarbon liquids, or produced water. They are almost exclusively fixed roof tanks. Typically, the most significant cause of emissions from storage vessels at oil and natural gas sites is the “flashing” that occurs when the pressure of a hydrocarbon liquid (oil, condensate, or water) drops, causing volatile components in the liquid to vaporize and be emitted. Flash emissions are somewhat dependent on throughput, as well as a number of other factors (e.g., volatility, composition, density, temperature, pressure drop). Working loss emissions are directly dependent on the throughput of liquid through the vessel.

In order to estimate methane emissions from storage vessels at marginal wells, the EPA developed emissions factors based on the barrels of oil or condensate per day of the well. The EPA created separate methane and VOC emissions factors for storage vessels containing condensate and those containing heavy oil, then averaged the two factors to estimate the storage vessel emissions. The representative marginal well site storage vessel emissions are

0.63 tpy methane and 2.9 tpy VOC. The origin of the emissions factors and estimated emission levels are provided in the Marginal Well TSD, available in the docket for this proposed rule.⁴⁰⁶

vi. Gas Well Liquids Unloading

In new gas wells, there is generally sufficient reservoir pressure/gas velocity to facilitate the flow of water and hydrocarbon liquids from the wellbore through the well head and to the surface along with produced gas. In mature gas wells, the accumulation of liquids in the wellbore can occur when the bottom well pressure/gas velocity approaches the average reservoir pressure, and there is not enough pressure to force the liquids to the surface. This accumulation of liquids can impede and sometimes halt gas production. When the accumulation of liquid results in the slowing or cessation of gas production, the operator must remove the fluids to maintain production. Mature gas wells therefore often need to remove or “unload” the accumulated liquids (*i.e.*, liquids unloading) so that gas production is not inhibited.

The choice of what liquids unloading technique to employ is based on a well-by-well and reservoir-by-reservoir analysis. To address the complex science and engineering considerations to cover well unloading requirements, many technologies, techniques, and practices have been developed to address an individual well’s characteristics. At the onset of liquids loading, operators typically use techniques that rely on the reservoir pressure. Eventually a well’s reservoir pressure is not sufficient to remove the liquids from the well and it is necessary to add energy to the well to continue production. Owners and operators can choose from several techniques to remove the liquids, including manual unloading, velocity tubing or velocity strings, beam or rod pumps, electric submergence pumps, intermittent unloading, gas lift (e.g., use of a plunger lift), foam agents, and wellhead compression. Each of these methods/procedures removes accumulated liquids and thereby maintains or restores gas production. Although the unloading method employed by an owner or operator can itself be a method that mitigates/eliminates venting of

emissions from a liquids unloading event, choosing a particular method to meet a particular well’s unloading needs is a production engineering decision.

The EPA estimates that the representative emissions from uncontrolled liquids unloading are 2.5 tpy methane and 0.7 tpy VOC per marginal gas well. The Marginal Well TSD, available in the docket for this proposed rule, provides additional detail on the baseline emission level.⁴⁰⁷

vii. Sweetening Units

At oil and natural gas production and processing sites, sweetening units (also called gas sweetening systems or amine plants) are specialized processing units designed to remove acid gases—primarily hydrogen sulfide (H₂S) and carbon dioxide (CO₂)—from sour natural gas or process streams. Sweetening units have been subject to NSPS standards since 1984, as NSPS subpart LLL regulates SO₂ emissions for all sweetening units constructed, reconstructed, or modified after January 20, 1984. In addition, NSPS OOOO, NSPS OOOOa, and NSPS OOOOb all include SO₂ standards for sweetening units. The EPA does not believe that sweetening units are located at well sites, as evidenced by the fact that NSPS OOOO and NSPS OOOOa (initially for NSPS OOOOa) only applied to sweetening units located at onshore natural gas processing plants. However, in 2020, the Agency modified NSPS OOOOa to align with NSPS LLL, by revising the affected facility description for the SO₂ standards to include all onshore sweetening units that process natural gas produced from either onshore or offshore wells.⁴⁰⁸ While the EPA made this change, the Agency is not aware that sweetening units are located at well sites, much less at marginal well sites. However, the EPA is proposing to include the same SO₂ standards for marginal well sites that are currently in NSPS OOOOb.⁴⁰⁹ These standards require facilities to remove a specified percentage of SO₂ from acid gas streams, and the required efficiency depends on how much hydrogen sulfide (H₂S) is in the gas and how much sulfur

⁴⁰⁵ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

⁴⁰⁶ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

⁴⁰⁷ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

⁴⁰⁸ 85 FR 57398 (September 15, 2020); 40 CFR 60.5365a(g).

⁴⁰⁹ 40 CFR 60.5365b(g).

is being processed.⁴¹⁰ The Agency is specifically requesting information on whether sweetening units are located at marginal well sites and whether different standards should be included in NSPS OOOOb for sweetening units located at marginal well sites. (Question III.10b) The EPA is not proposing that sweetening unit presumptive standards be included in EG OOOOc, as they are not a source of methane emissions.

The remainder of this section addressing the proposed standards for marginal wells does not include any

discussion of sweetening units or the proposed standards in NSPS OOOOb.

g. NSPS OOOOb and EG OOOOc Requirements and Estimated Impacts for Marginal Well Site Representative Emission Sources

Following are brief summaries of the NSPS OOOOb standards and EG OOOOc presumptive standards for the six emission source types that may be present at marginal well sites.

i. Fugitive Emissions Components

Table 7 provides an overview of the monitoring requirements in NSPS

OOOOb and EG OOOOc for each type of well site. If any source of fugitive emissions is identified via the monitoring survey using audible, visual, and olfactory (AVO) methods, the owner or operator must make a first attempt at repair within 15 days of detection and must complete the repair 15 days after the first attempt. If a leak or malfunction is identified via OGI or Method 21, the owner or operator must make a first attempt at repair within 30 days of detection and must complete the repair 30 days after the first attempt.⁴¹¹

Table 7. Overview of NSPS OOOOb and EG OOOOc Fugitive Emissions Component Monitoring Requirements

Well Type	Fugitive Emissions Component Monitoring Requirements ^a
Single wellhead only well site	Quarterly audible, visual, and olfactory (AVO)
Small wellsite	Quarterly AVO monitoring; visual inspection of thief hatches and separator dump valves
Multi-wellhead only well site	Quarterly AVO and Semiannual OGI or Method 21
Well sites or centralized production facilities that contain major production and processing equipment	Bimonthly AVO and visual inspection of thief hatches and separator dump valves; Quarterly OGI or Method 21

^a 40 CFR 60.5397b(g)(1)/60.5397c(g)(1) allow for the use of AVO or any other detection method, after the initial survey.

ii. Process Controllers

The standards in NSPS OOOOb and presumptive standards in EG OOOOc require zero methane and zero VOC emissions for all controllers at well sites. The exception is for controllers at Alaska sites without access to electrical grid power, where the requirement is to use low-bleed controllers and perform OGI monitoring of intermittent controllers to ensure proper operation.

iii. Pumps

The standards in NSPS OOOOb and presumptive standards in EG OOOOc establish requirements that vary depending on the number of natural gas-driven diaphragm pumps at the well site and whether the site has access to electrical grid power. For any site with access to electrical grid power and for sites without access to electrical grid power that have three or more natural

gas-driven diaphragm pumps, the standard for all pumps in the affected facility is zero emissions of VOC and methane. For sites without access to electrical grid power that have fewer than three diaphragm pumps (two or one), the standards require owners and operators to route methane and VOC emissions from all natural gas-driven pumps at the affected facility to a process if a VRU is onsite. If a VRU is not onsite, owners and operators must reduce emissions by 95 percent if a control device with at least this emissions reduction capability is already available onsite. If a control device is onsite but is not capable of reducing 95 percent, owners and operators must reduce emission to the maximum extent achievable by the control device.

iv. Oil Well Associated Gas

NSPS OOOOb requires owners and operators to route all associated gas to a sales line, use it for another purpose, or reinject it back into the reservoir or another well, unless they demonstrate that it is technically infeasible. In limited circumstances related to when construction of the well commenced, owners and operators may flare associated gas provided they demonstrate that it is technically infeasible to route the gas to a sales line, capture and use it for another purpose, or reinject it back into the reservoir or another well. In the model rule for EG OOOOc, owners and operators of wells with associated gas methane content of 40 tpy or less may route to a flare. For wells with associated gas contents greater than 40 tpy, owners and operators must route the gas to a sales line, capture it and use it for another

⁴¹⁰ See 40 CFR 60.5405b.

⁴¹¹ 40 CFR 660.5397b(h)(2).

purpose, or reinject it back into the reservoir or another well, unless they demonstrate that these options are technically infeasible.

v. Storage Vessels

In both NSPS OOOOb and EG OOOOc, the storage vessel affected/ designated facility is the tank battery, which is defined as “a group of all storage vessels that are manifolded together for liquid transfer. A tank battery may consist of a single storage vessel if only one storage vessel is present.”⁴¹² Under NSPS OOOOb, if the potential emissions are greater than 6 tpy VOC or 20 tpy methane, owners and operators must route emissions via a closed vent system to a control device that achieves 95 percent reduction or to a flare. Under EG OOOOc, the applicability threshold is 20 tpy methane.

vi. Gas Well Liquids Unloading

Both NSPS OOOOb and EG OOOOc require that owners and operators

perform best management practices to minimize or eliminate methane and/or VOC emissions to the maximum extent possible during liquids unloading events that vent emissions to the atmosphere. For unloading technologies or techniques that eliminate venting of emissions during liquids unloading events, NSPS OOOOb and EG OOOOc require only minimal recordkeeping and reporting. For unloading technologies or techniques that could result in venting to the atmosphere, NSPS OOOOb and EG OOOOc require owners and operators to follow work practices. Specifically, owners and/or operators must employ and document best management practices to minimize or eliminate venting of methane and VOC emissions for each gas well liquids unloading operation.

vii. Summary

The EPA evaluated the total cumulative cost impacts of the NSPS OOOOb requirements on the representative marginal well facilities

discussed above. Specifically, the Agency estimated the capital costs, the total annual costs (including annualized capital costs and operation and maintenance costs), the VOC and methane emissions reductions, and the cost effectiveness. The Agency then compared the annual costs to the anticipated profits.

The EPA estimated profits for high, mid, and low range price scenarios for marginal wells (*i.e.*, wells that have production equivalent to 15 boe per day or less) using information on production levels and price scenarios from the U.S. EIA. The high-range scenario represents a situation where an owner can sell their oil and gas for a high dollar amount which equates to more profit for the same production volume compared to the mid-range and low-range price scenarios. Table 8 provides these estimates. The Marginal Well TSD for this proposed rule, available in the docket, provides the basis for these profit levels.

Table 8. Estimated Marginal Well Profit Levels

Profit Price Scenario	Profit for Marginal Oil Wells (\$/yr)	Profit for Marginal Gas Wells (\$/yr)
Low	\$28,603	\$7,916
Mid	\$43,064	\$11,793
High	\$56,375	\$23,274

⁴¹² 40 CFR 60.5430b (tank battery definition); 40 CFR 60.5430c (tank battery definition).

Table 9 provides an overview of the cost impacts of the NSPS OOOOb standards and EG OOOOc presumptive standards on the representative

marginal well facilities presented in the previous sections. The Marginal Well TSD, available in the docket for this

proposed rule provides additional detail for these estimated impacts.

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Table 9. Impacts of NSPS OOOOb and EG OOOOc on Marginal Well Representative Facilities

Emission Source/ Requirement	Capital Cost (\$)	Total Annual Cost (\$/yr)	Annual Cost Compared to Marginal Well Mid-Range Profit Price Scenario (%)		Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Cost-effectiveness	
			Oil	Gas			Methane (\$/ton)	VOC (\$/ton)
Fugitive Emissions - Single Wellhead Only Site: Quarterly AVO	\$116	\$869	2.0%	7.4%	0.56	0.16	\$1,552	\$5,431
Fugitive Emissions - Small Well Site: Quarterly AVO	\$116	\$920	2.1%	7.8%	0.71	0.20	\$1,296	\$4,600
Fugitive Emissions - Multi-Wellhead Only Site: Semiannual OGI, Quarterly AVO	\$1,552	\$3,487	8.1%	29.6%	1.83	0.55	\$1,910	\$6,299
Fugitive Emissions – Well Sites that contain major production and processing equipment: Quarterly OGI and	\$1,509	\$5,658	13.1%	48.0%	3.94	1.09	\$1,435	\$6,169

Emission Source/ Requirement	Capital Cost (\$)	Total Annual Cost (\$/yr)	Annual Cost Compared to Marginal Well Mid-Range Profit Price Scenario (%)		Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Cost-effectiveness	
			Oil	Gas			Methane (\$/ton)	VOC (\$/ton)
Bimonthly AVO								
Process Controllers: Zero Emissions ^a	\$36,829	\$9,019	20.9%	76.5%	2.66	0.74	\$3,391	\$12,188
Pumps: Route to Existing Control ^b	\$8,027	\$881	2.0%	7.5%	3.29	0.91	\$268	\$966
Pumps: Zero Emissions ^b	\$32,800	\$4,769	11.1%	40.4%	3.46	0.96	\$1,378	\$4,967
Associated Gas: 95% or Flare ^c	\$132,301	\$47,411	110.1%	N/A	10.32	2.87	\$4,596	\$16,532
NSPS OOOOb: Associated Gas: Route to Sales	\$439,922	\$89,393	208%	N/A	55.73	15.6	\$8,232	\$29,613
EG OOOOc: Associated Gas: Route to Sales	\$439,922	\$89,393	52.0% ^c	N/A	55.73	15.6	\$8,232	\$29,613
NSPS OOOOb: Storage Vessels: 95% or Flare if VOC >6 tpy or Methane >20 tpy	\$132,301	\$47,411	27.6% ^d	101% ^d	23.75 ^d	109.6 ^d	\$1,996	\$432
EG OOOOc: Storage Vessels: 95% or Flare if Methane >20 tpy	\$0 ^e	\$0 ^e	n/a ^e	n/a ^e	n/a ^e	n/a ^e	n/a ^e	n/a ^e
Liquids Unloading: Best	\$0	\$739	1.7%	6.0%	0.63	0.18	\$1,171	\$4,224

Emission Source/ Requirement	Capital Cost (\$)	Total Annual Cost (\$/yr)	Annual Cost Compared to Marginal Well Mid-Range Profit Price Scenario (%)		Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Cost-effectiveness	
			Oil	Gas			Methane (\$/ton)	VOC (\$/ton)
Management Practices ^f								

^a Process controllers located at sites in Alaska without access to electricity are allowed to use low-bleed controllers. These estimated impacts only consider well sites subject to zero emissions.

^b Pumps at well sites with access to electricity, and those with three or more pumps are subject to the zero emissions standard. For pumps at well sites with less than three diaphragm pumps that do not have access to electricity, emissions must be routed to a control device, if there is one on-site (*i.e.*, a new dedicated control device is not required).

^c NSPS OOOOb requires that all associated gas must either be routed to a sales line or used for another purpose. In limited circumstances related to when construction of the well was originally commenced, flaring is allowed provided there is a demonstration that it is technically infeasible to route the gas to a sales line or use it for another purpose. In the model rule for EG OOOOc, wells with methane contained in the associated gas of 40 tpy or less can be routed to a flare. Wells with associated gas contents greater than 40 tpy must route to sales or use for another purpose. The representative marginal well facility produces associated gas with a methane content of 10.9 tpy, meaning that EG OOOOc would require that it be routed to a flare. It would not be subject to the route to a sales line or used for another purpose requirement. However, higher production marginal wells could produce associated gas with content higher than 40 tpy. For the purpose of this illustration, the production rate for marginal well sites with production levels between 6 and 15 boe per day was used, with estimated potential associated gas emissions level of 55.7 tpy (control would be required). Therefore, the comparison to profits is made based on the mid-range profit level for marginal oil wells with production levels between 6 and 15 boe per day, which is \$171,732 per year.

^d At the representative marginal well site (< 15 boe/day), storage vessels are not expected to have a PTE greater than 6 tpy VOC or 20 tpy methane. However, for a representative marginal well site with higher production levels (*i.e.*, those with production levels between 6 and 15 boe per day), the estimated VOC emissions are 11.2 tpy and thus would be subject to the NSPS OOOOb standards. Therefore, the comparison to profits is made based on the mid-range profit level for marginal oil wells with production levels between 6 and 15 boe per day, which is \$171,732 per year, and the emissions reductions are based on the representative emissions for marginal wells in this range.

^e Storage vessels at marginal gas well sites are not expected to have a PTE greater than 20 tpy methane and, and thus are not anticipated to incur costs under EG OOOOc.

^f Both NSPS OOOOb and EG OOOOc require that owners and operators perform best management practices to minimize or eliminate methane and VOC emissions to the maximum extent possible from liquids unloading events that vent emissions to the atmosphere. For unloading technologies or techniques that eliminate venting of emissions during liquids unloading events, NSPS OOOOb and EG OOOOc require minimal recordkeeping and reporting.

annual compliance costs in the March 2024 Final Rule for fugitive component emissions at well sites or centralized production facilities that contain major production and processing equipment represent 13 percent of the mid-range profits for marginal oil wells and 48 percent of the mid-range profits for marginal gas wells. The cumulative cost impact on an individual marginal well site would be based on adding up all of the costs for all of the specific emission sources at the site. As such, the cumulative annual compliance costs could represent a significant percentage of the profits for a marginal well, even to the extent of exceeding the profits. For example, at a marginal gas well site that contains major production and processing equipment with fugitive components and process controllers, the estimated cumulative annual compliance costs represent over 120 percent of the mid-range profit level. This finding supports the idea that the true cost of compliance with the March 2024 Final Rule for marginal wells is unreasonable. The true cumulative cost of compliance appears to be more than the marginal well subcategory of the industry can bear and survive. Accordingly, the EPA proposes to determine that the collective suite of standards from the March 2024 Final Rule, as applied to marginal wells, do not together represent the BSER because their collective costs are excessive and unreasonable, as shown in table 9.

h. Control Options for Marginal Well Sites

This section introduces the control options the EPA identified and evaluated for emission sources at marginal oil and natural gas well sites. For each control option for each emissions source, the Agency assessed the cost and emissions reductions and calculated the costs in relation to the associated emissions reduction (*i.e.*, the cost effectiveness). When the cost effectiveness was higher than the Agency has historically considered

reasonable for a control option, the EPA is proposing to determine that that option is not viable and the Agency removed it from consideration in the marginal well regulatory options.

Next, the EPA compared the annual costs of the control option to the estimated profit levels for the mid-range price scenario for marginal wells (see table 8). Where the Agency is proposing to determine that the annual cost of a control option, in isolation, was unreasonably high given the mid-scenario profit level (*i.e.*, that the compliance costs of that specific control option represented a sizable portion of the estimated profit), the Agency is proposing that that control option is not cost reasonable and removed it from consideration in the marginal well regulatory options. Note that, later in the regulatory alternatives section (see section III.J.1.i), the EPA further discusses comparisons between the cumulative annual compliance costs of the full well site suite of control requirements in each regulatory alternative and the mid-range profits used to assess the cost reasonableness of the overall compliance package for a marginal well site. In this first step, the EPA is assessing the cost reasonableness of an individual control option for an emission source type to determine whether it should be included as part of the set of alternatives to be further evaluated.

Finally, a factor that the EPA considered in assessing the viability of control options for marginal well sites is the relationship to the requirements in NSPS OOOO and NSPS OOOOa. Emission sources at oil and natural gas well sites constructed, reconstructed, or modified between August 23, 2011, and September 18, 2015, are subject to NSPS OOOO. Emission sources at oil and natural gas well sites constructed, reconstructed, or modified between September 18, 2015, and December 6, 2022, are subject to NSPS OOOOa. Under the EG OOOOc model rule, emission sources constructed, modified,

or reconstructed before December 6, 2022, will be designated facilities. Therefore, all NSPS OOOO and NSPS OOOOa affected facilities will also be designated facilities subject to state or federal rules in accordance with EG OOOOc.

This situation is not unique to marginal wells. The EPA discussed this overlap in detail in section VII.C of the preamble for the March 2024 Final Rule.⁴¹³ Overall, the Agency concluded that the presumptive standards in EG OOOOc are as stringent as, and in many cases more stringent than, the standards in NSPS OOOO and NSPS OOOOa. The Agency stated that “the EPA concludes that the methane presumptive standards in EG OOOOc will result in the same or greater emission reductions than the VOC and methane standards in previous NSPS KKK, NSPS OOOO, or NSPS OOOOa. Once sources are subject to and in compliance with a state or Federal plan implementing EG OOOOc, and if that plan is just as stringent as or more stringent than the presumptive standards in EG OOOOc, the source will be deemed to comply with the previous respective VOC NSPS, and no longer subject to the methane NSPS, and will comply with only the state or Federal plan implementing EG OOOOc.”⁴¹⁴

The EPA is proposing to not further consider control options for marginal well sites that are less stringent than the NSPS OOOO or NSPS OOOOa requirements. This avoids the situation where different standards could apply to different subsets of marginal wells, and the associated confusion about which requirements apply. The Agency therefore removed any such control options from the BSER analysis.

Table 10 provides a summary of the NSPS OOOO and OOOOa requirements for the emission sources at well sites that emit VOC and methane.

⁴¹³ 89 FR 16869–71 (March 8, 2024).

⁴¹⁴ 89 FR 16869 (March 8, 2024).

Table 10. Summary of NSPS OOOO and NSPS OOOOa Requirements

Emissions Source/Affected Facility	NSPS OOOO Requirement	NSPS OOOOa Requirement
Fugitive Emissions	No Requirements	Semiannual OGI/Method 21 Monitoring and Repair
Controllers	Low Bleed	Low Bleed
Pumps	No Requirements	Route to Existing Control Device
Associated Gas (Oil Wells Only)	No Requirements	No Requirements
Storage Vessels	95% Control or Flare if Uncontrolled VOC Emissions are 6 tpy or greater ^a	95% Control or Flare if Uncontrolled VOC Emissions are 6 tpy or greater ^a
Liquids Unloading (Gas Wells Only)	No Requirements	No Requirements

^a The storage vessel affected facility is a single storage vessel.

After the EPA identified the viable control options, the Agency then calculated weighted impacts to reflect the anticipated costs and emissions reductions that would occur, on average, at marginal well sites for all emissions sources at a site. In many cases, only some emission sources are present at a marginal well site (*e.g.*, only some marginal well sites have a natural gas-driven pump). In other cases, an emission source may be present, but the emissions fall below the applicability threshold for the control option being considered. Therefore, the Agency estimated weighted impacts for each control option based on data for marginal wells, where available, and the EPA’s technical knowledge regarding

the prevalence of the emission source at marginal well sites and the percentage of sources above specific emission levels for applicability.⁴¹⁵ For more information about the EPA estimates of the fraction of sites with each type of emission source and other information used to develop weighted impacts of the various control options, see the Marginal Well TSD, available in the docket for this proposed rule. The Agency then carried these weighted average impacts for individual control options forward for consideration in the regulatory alternatives (see Section III.K.1.i of this preamble).

i. Fugitive Component Emissions

The EPA identified three control options for fugitive component

emissions at marginal well sites: (1) annual AVO monitoring, (2) semiannual AVO monitoring (*i.e.*, twice per year), and (3) quarterly AVO monitoring. In addition, for well sites that contain major production and processing equipment, the Agency considered a fourth option of annual OGI monitoring and quarterly AVO monitoring. Tables 11 and 12 provide the estimated impacts of the control options for each of the marginal well site types. For comparison to the March 2024 Final Rule, these two tables also include control options equivalent to the requirements in NSPS OOOOb.

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⁴¹⁵ U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources:

Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG).

40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

Table 11. Cost Impacts of Fugitive Component Emissions Control Options for an Individual Marginal Well Site

Control Option	Capital Cost (\$)	Annual Cost (\$/yr)	Percentage of Mid-Range Profit (Oil Well)	Percentage of Mid-Range Profit (Gas Well)
Single Wellhead Well Site				
Annual AVO	\$0	\$0	0.0%	0.0%
Semiannual AVO	\$116	\$549	1.3%	4.7%
Quarterly AVO	\$116	\$869	2.0%	7.4%
Small Well Site				
Annual AVO	\$0	\$0	0.0%	0.0%
Semiannual AVO	\$116	\$574	1.3%	4.9%
Quarterly AVO	\$116	\$920	2.1%	7.8%
Multi-Wellhead Well Site				
Annual AVO	\$0	\$0	0.0%	0.0%
Semiannual AVO	\$202	\$667	1.5%	5.7%
Quarterly AVO	\$202	\$1,091	2.5%	9.3%
Semiannual OGI and Quarterly AVO	\$1,552	\$3,487	8.1%	29.6%
Well sites that contain major production and processing equipment				
Annual AVO	\$0	\$0	0.0%	0.0%
Semiannual AVO	\$159	\$837	1.9%	7.1%
Quarterly AVO	\$159	\$1,377	3.2%	11.7%
Annual OGI and Quarterly AVO	\$1,509	\$4,127	9.6%	35.0%
Quarterly OGI and Bimonthly AVO	\$1,509	\$5,658	13.1%	48.0%

Table 12. Emissions Impacts of Fugitive Component Emissions Control Options on an Individual Marginal Well Site

Control Option	Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Cost-effectiveness	
			Methane (\$/ton)	VOC (\$/ton)
Single Wellhead Well Site				
Annual AVO ^a	0.00	0.00	N/A	N/A
Semiannual AVO	0.40	0.11	\$1,373	\$4,991
Quarterly AVO	0.56	0.16	\$1,552	\$5,431
Small Well Site				
Annual AVO ^a	0.00	0.00	N/A	N/A
Semiannual AVO	0.46	0.13	\$1,248	\$4,415
Quarterly AVO	0.71	0.20	\$1,296	\$4,600
Multi-Wellhead Site				
Annual AVO ^a	0.00	0.00	N/A	N/A
Semiannual AVO	0.61	0.17	\$1,093	\$3,924
Quarterly AVO	0.90	0.25	\$1,212	\$4,364
Semiannual OGI and Quarterly AVO	1.99	0.55	\$1,752	\$6,340
Well sites that contain major production and processing equipment				
Annual AVO ^a	0.00	0.00	N/A	N/A
Semiannual AVO	1.84	0.51	\$455	\$1,644
Quarterly AVO	1.96	0.54	\$701	\$2,531
Annual OGI and Quarterly AVO	3.52	0.98	\$1,172	\$4,232
Quarterly OGI and Bimonthly AVO	3.94	1.09	\$1,435	\$5,169

^a Based on discussions with industry, the EPA assumes that owners and operators of marginal well sites perform AVO at least annually as part of current practices. Therefore, there would be no impacts due to this option.

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As shown in table 10, NSPS OOOOa requires semiannual OGI monitoring at all well sites except for wellhead only sites. On one hand, this could suggest that at least some marginal wells (those subject to NSPS OOOOa) can bear and survive the cost of semiannual OGI monitoring. However, the EPA is considering a less costly standard for marginal wells in this action for NSPS OOOOb and EG OOOOc that is just as effective for emissions reduction purposes, if not more effective than the requirements in NSPS OOOOa. In the March 2024 Final Rule preamble, the Agency provided a conclusion that quarterly AVO is equivalent to, and potentially more effective than, semiannual OGI: “the EPA is concluding that . . . AVO is effective, and therefore OGI is unnecessary, for detecting fugitive emissions from many of the fugitive emissions components at

these sites. By requiring more frequent visits to the sites, the final presumptive standard in EG OOOOc would allow earlier detection and repair of fugitive emissions, in particular large emissions from components such as thief hatches on uncontrolled storage vessels. The EPA concludes that the final presumptive standards under the proposed EG OOOOc, which would be quarterly AVO for single wellhead only well sites and small well sites, quarterly AVO and semiannual OGI for multi-wellhead only well sites, and bi-monthly AVO and quarterly OGI for well sites with major production and processing equipment and centralized production facilities would effectively address the fugitive emissions at these well sites and that semiannual OGI monitoring would no longer be necessary for these well sites. Therefore, these sources need to comply with NSPS OOOOa until they are in

compliance with a state or Federal plan implementing EG OOOOc. Once subject to and in compliance with such a plan, then they no longer need to comply with NSPS OOOOa.”⁴¹⁶ The EPA is proposing that the conclusion that quarterly AVO is as effective as semiannual OGI applies equally to all marginal well sites, including multi-wellhead marginal well sites, and well sites with major production and processing equipment. For more details on the EPA’s comparative analysis of the effectiveness of quarterly AVO and semiannual OGI at marginal well sites, see the Marginal Well TSD, available in the docket for this proposed rule.

Based on this comparison to the NSPS OOOOa standards, the EPA proposes that quarterly AVO is a viable control option for fugitive component emissions at marginal well sites. This option

⁴¹⁶ 89 FR 16871 (March 8, 2024).

achieves meaningful emission reductions at a cost that is reasonable in isolation at a marginal well site. The Agency also proposes to conclude that annual and semiannual AVO are not the best options, as they result in fewer emissions reductions compared to quarterly AVO, and these options would not be equivalent to the current NSPS OOOOa standards. Therefore, the only control options for fugitive emissions components included in the marginal well regulatory alternatives are (1) quarterly AVO (for all marginal well sites) and (2) annual OGI with quarterly AVO for large marginal well sites and

quarterly AVO for all other marginal well sites. In sections III.K.1.i and j, we further consider whether the remaining control options are still reasonable when combined with other costs for other controls at marginal well sites.

ii. Process Controllers

The EPA identified six control options for process controllers: (1) no control, (2) requiring continuous bleed controllers to be low bleed and requiring annual AVO inspections for malfunctioning intermittent vent controllers, (3) requiring continuous bleed controllers to be low bleed and

requiring semiannual AVO inspections for malfunctioning intermittent vent controllers, (4) requiring continuous bleed controllers to be low bleed and requiring quarterly AVO inspections for malfunctioning intermittent vent controllers, (5) requiring continuous bleed controllers to be low bleed and requiring annual OGI inspections and quarterly AVO inspections for malfunctioning intermittent vent controllers, and (6) requiring zero emission controllers. Tables 13 and 14 provide the estimated impacts of the six control options for a marginal well site.

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Table 13. Cost Impacts of Process Controller Control Options for an Individual Marginal Well Site

Control Option	Capital Cost (\$)	Annual Cost (\$/yr)	Percentage of Mid-Range Profit (Oil Well)	Percentage of Mid-Range Profit (Gas Well)
No Control	\$0	\$0	0.0%	0.0%
Low-Bleed/Annual AVO	\$0	\$110	0.3%	0.9%
Low-Bleed/ Semiannual AVO	\$0	\$220	0.5%	1.8%
Low-Bleed/Quarterly AVO	\$0	\$439	1.0%	3.6%
Low-Bleed/Annual OGI and Quarterly AVO	\$0	\$531	1.2%	4.3%
Zero Emissions Controllers	\$36,829	\$9,019	20.9%	76.5%

Table 14. Emissions Impacts of Process Controller Control Options for an Individual Marginal Well Site

Control Option	Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Methane Cost Effectiveness (\$/ton)	VOC Cost Effectiveness (\$/ton)
No Control	0	0	N/A	N/A
Low-Bleed/Annual AVO	0.11	0.03	\$998	\$3,658
Low-Bleed/ Semiannual AVO	0.22	0.06	\$998	\$3,658
Low-Bleed/Quarterly AVO	0.44	0.12	\$998	\$3,658
Low-Bleed/Annual OGI and Quarterly AVO	1.63	0.45	\$326	\$1,176
Zero Emissions Controllers	2.66	0.74	\$3,391	\$12,240

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For the sixth option, requiring zero emission controllers, the EPA considered the comparison of annual costs to the average marginal well profits value to be cost unreasonable. The annual cost of this control option in isolation represents over 73 percent of

profits at a marginal gas well site. Thus, the Agency proposes to determine that zero emission controllers are not a viable control option for marginal well sites. While all five remaining options appear to be viable when evaluated individually, the estimated costs assume

that the inspections for process controllers are performed in conjunction with the inspections required for fugitives. Since the EPA is proposing to determine that annual AVO and semiannual AVO are not viable options for fugitives monitoring (see above), the

Agency also eliminated them from consideration for process controllers.

As noted previously, the EPA proposes to not further consider control options that are less stringent than the requirements in NSPS OOOO and NSPS OOOOa. Therefore, the only remaining options, which align with the options further considered for fugitives monitoring, are (1) low bleed devices for continuous bleed natural gas-driven pneumatic controllers along with quarterly AVO inspections for

intermittent vent natural gas-driven controllers, and (2) low bleed devices for continuous bleed natural gas-driven pneumatic controllers along with quarterly AVO and annual OGI inspections for intermittent vent natural gas-driven controllers.

iii. Pumps

The EPA identified four control options for pumps: (1) no control, (2) routing emissions to an existing control device that achieves 95% emission reduction if one is already available

onsite that can accept emissions from the pump, (3) routing emissions to a newly purchased and installed flare (or other control device that achieves 95 percent reduction in VOC and methane emissions) if no existing control device is available, and (4) zero emission pumps. Tables 15 and 16 provide the estimated impacts of the four control options for a marginal well site (assuming one natural gas-driven pneumatic pump per site).

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Table 15. Cost Impacts of Pump Control Options for an Individual Marginal Well Site

Control Option	Capital Cost (\$)	Annual Cost (\$/yr)	Percentage of Mid-Range Profit (Oil Well)	Percentage of Mid-Range Profit (Gas Well)
No Control	\$0	\$0	0.0%	0.0%
Route to Existing Control	\$8,027	\$881	2.0%	7.5%
Route to Control (95%)	\$132,301	\$47,411	110.1%	402%
Zero Emission Pumps for well sites with electricity and sites with 3 or more pumps	\$9,371	\$1,572	3.7%	13.3%

Table 16. Emissions Impacts of Pump Control Options for an Individual Marginal Well Site

Control Option	Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Methane Cost Effectiveness (\$/ton)	VOC Cost Effectiveness (\$/ton)
No Control	0.00	0.00	N/A	N/A
Route to Existing Control	3.29	0.91	\$268	\$966
Route to Control (95%)	3.29	0.91	\$14,424	\$51,986
Zero Emission Pumps for well sites with electricity and sites with 3 or more pumps	3.46	0.96	\$454	\$1,638

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The EPA considered both the comparison of annual costs to marginal well profits and the cost effectiveness values for the option to route to a new control device to be cost unreasonable. Thus, the Agency proposes to determine that routing to a new control device is not a viable control option for marginal well sites. The EPA also proposes to not further consider the “no control” option as it is less stringent than the standard for pumps in NSPS OOOOa. Therefore,

the only viable control options for pumps at marginal well sites that the Agency considered in the regulatory alternatives analysis are: (1) routing emissions to an existing control device that achieves a 95% emission reduction if one is already on site that can accept the emissions from the pump(s), and (2) zero emission pumps for well sites with electricity and sites with 3 or more diaphragm pumps.

iv. Oil Well Associated Gas

The EPA identified four control options for associated gas at marginal oil well sites: (1) no control, (2) routing to an existing control device if one is already on site, (3) routing to a flare (or other control device that achieves 95 percent reduction in VOC and methane emissions) if potential methane emissions are 20 tpy, or greater (which may require purchasing and installing a new flare if there is not an existing

control device), and (4) routing to a control device achieving 95 percent reduction (no threshold). In section III.J.3 of this preamble, the Agency is proposing that routing associated gas to a sales line is not BSER. As such, the EPA did not evaluate routing associated gas to a sales line as a control option for this analysis. However, analysis of this option is available in the marginal well TSD. In section III.J.3 of this preamble, the Agency is also proposing that

routing associated gas through a closed vent system to a control device achieving 95 percent reduction is BSER for non-marginal wells. This is equivalent to option 4 in this analysis for marginal wells. The Agency has previously determined that 20 tpy methane emissions is the level below which the costs of flaring storage vessel emissions are not considered reasonable relative to the emissions reductions achieved.⁴¹⁷ In recognition of this,

control option 3 is an intermediate option that includes this methane emissions threshold for the requirement to flare associated gas from marginal wells. For this option, no control would be required if uncontrolled methane emissions are less than 20 tpy.

Tables 17 and 18 provide the estimated impacts of the four control options for a marginal well site.

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Table 17. Cost Impacts of Associated Gas Control Options for an Individual Marginal Well Site

Control Option	Capital Cost (\$)	Annual Cost (\$/yr)	Percentage of Mid-Range Profit (Oil Well)
No Control	\$0	\$0	0.0%
Route to Existing Control	\$8,027	\$881	2.0%
Route to Control (95%) if > 20 tpy methane	\$132,301	\$47,411	27.6% ^a
Route to Control (95%) (no threshold)	\$132,301	\$47,411	110%

^a The estimated average methane emissions level from marginal wells with production levels less than 15 boe per day is 10.9 tpy, which would not require control under this option. However, at higher production levels the potential emissions would increase. Based on the average production rate for marginal well sites with production levels between 6 and 15 boe per day, the estimated potential associated gas emissions level is 55.7 tpy (control would be required). Therefore, the comparison to profits is made based on the mid-range profit level for marginal oil wells with production levels between 6 and 15 boe per day, which is \$171,732 per year.

⁴¹⁷ 86 FR 63178 (November 15, 2021).

Table 18. Emissions Impacts of Associated Gas Control Options for an Individual Marginal Well Site

Control Option	Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Methane Cost effectiveness (\$/ton)	VOC Cost effectiveness (\$/ton)
No Control	0.00	0.00	N/A	N/A
Route to Existing Control	10.3	2.9	\$85	\$307
Route to Control (95%) if > 20 tpy methane	53.2. ^a	14.8 ^a	\$892 ^a	\$3,207 ^a
Route to Control (95%) (no threshold)	10.3	2.9	\$4,596	\$16,532

^a Based on the average production rate for marginal well sites with production levels between 6 and 15 boe per day, the estimated potential associated gas emissions level is 55.7 tpy (control would be required). Therefore, the emission reductions and cost effectiveness calculations are based on this level of emissions.

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For the fourth option, routing to a control device achieving 95 percent reduction (with no minimum threshold for potential methane emissions), the EPA considered the comparison of annual costs to the average marginal well profits value and proposes to determine that this option is cost unreasonable for a marginal well site. The EPA also reviewed whether routing to an existing control device if one is available is a viable control option for associated gas. At a marginal well site, the flow rate of associated gas to a flare or other control device would likely be significantly larger than that of another emission source. Therefore, an existing control device at a marginal well site that is designed for other emission sources with significantly lower flow rates would be unlikely to be able to handle the higher flows from the associated gas. Thus, the Agency does not anticipate situations where it would be technically feasible to route the associated gas to an existing control device. Given this assumption that it would be technically infeasible to route associated gas to an existing control device already at a marginal well site in many, if not all situations, the EPA proposes to conclude that including this requirement would add unnecessary burden (due to the associated

requirement to demonstrate technical infeasibility if routing to existing control is not technically feasible) without any environmental benefit. Thus, although the cost effectiveness shown in Table 17 for routing to an existing control device is reasonable, the EPA proposes to conclude that routing to an existing control device if one is available is not the best control option for associated gas. The Agency is specifically requesting comment on these assumptions and whether routing to an existing control device should be considered a viable option for associated gas at marginal oil wells. (Question III.10c)

Therefore, the EPA considered the following two control options in the regulatory alternatives for associated gas: (1) no control and (2) routing to a flare (or other control device that achieves 95 percent reduction in VOC and methane emissions) if potential methane emissions are 20 tpy or greater.

v. Storage Vessels

The EPA identified three control options for storage vessels at marginal wells: (1) no control, (2) routing to an existing control device if onsite already, and (3) routing to a flare (or other control device that achieves 95 percent reduction in VOC and methane emissions). Historically, the EPA has

determined that 6 tpy VOC and 20 tpy methane emissions are the levels below which the costs of flaring storage vessel emissions are not considered reasonable relative to the emissions reductions achieved for storage vessels.⁴¹⁸ In recognition of this, control option 3 includes this threshold. Specifically, control option 3 is routing to a control device that achieves 95 percent reduction in VOC and methane emissions or to a flare if the uncontrolled VOC emissions are 6 tpy or greater (NSPS OOOOb only) or the uncontrolled methane emissions are 20 tpy or greater (applicable to both NSPS OOOOb and EG OOOOc). Under this option, if uncontrolled VOC emissions are less than 6 tpy and uncontrolled methane emissions are less than 20 tpy, the storage vessel tank battery would not be an affected facility under NSPS OOOOb, and if the uncontrolled methane emissions are less than 20 tpy, the storage vessel tank battery would not be a designated facility under EG OOOOc. Thus, no control would be required. This is consistent with the current requirements in NSPS OOOOb and EG OOOOc. Tables 19 and 20 provide the estimated impacts of the three control options on a marginal well site.

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⁴¹⁸ 86 FR 63178 (November 15, 2021).

Table 19. Cost Impacts of Storage Vessel Control Options for an Individual Marginal Well Site

Control Option	Capital Cost (\$)	Annual Cost (\$/yr)	Percentage of Mid-Range Profit (Oil Well)
No Control	\$0	\$0	0.0%
Route to Existing Control	\$8,027	\$881	2.0%
Route to Control (95%) if > 20 tpy methane ^a	\$132,301	\$47,411	27.6% ^a

^a This option would only apply if the potential methane emissions from associated gas are 20 tpy or greater. The representative marginal well facility has uncontrolled emissions from storage vessels of 0.63 tpy methane and 2.9 tpy VOC - thus would not be required to control. However, higher production marginal well sites with high Gas-Oil Ratio (GOR) in the oil/condensate could have emissions that exceed 20 tpy methane or 6 tpy VOC. For the comparison to profits, the annual cost was compared with the mid-range profit for marginal wells with production levels between 6 and 15 boe/day.

Table 20. Emissions Impacts of Storage Vessel Control Options for an Individual Marginal Well Site

Control Option	Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Methane Cost Effectiveness (\$/ton)	VOC Cost Effectiveness (\$/ton)
No Control	0.00	0.00	N/A	N/A
Route to Existing Control	0.6	2.75	\$1,478	\$320
Route to Control (95%) if > 20 tpy methane	23.8 ^a	109.6 ^a	\$1,996 ^a	\$432 ^a

^a This would only apply if the potential methane emissions from associated gas are 20 tpy or greater. The representative marginal well facility has uncontrolled emissions from storage vessels of 0.63 tpy methane and 2.9 tpy VOC - thus would not be required to control. However, higher production marginal well sites with high GOR in the oil/condensate could have emissions that exceed 20 tpy methane or 6 tpy VOC. For the purpose of the cost effectiveness estimate, an uncontrolled emissions levels of 25 tpy methane and 115 tpy VOC was assumed.

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Both the option of no control and the option of routing to an existing control device are less stringent than the requirements in NSPS OOOO and NSPS OOOOa and the EPA proposes to not further consider these options. With regard to the option of routing to a control device that achieved 95 percent reduction if potential methane emissions are greater than 20 tpy, the comparison is not as straightforward because the affected facility definitions differ across rules. Under NSPS OOOO and NSPS OOOOa, a storage vessel affected facility is a single storage vessel

that has potential VOC emissions greater of 6 tpy or greater. Under EG OOOOc, the storage vessel designated facility is a tank battery that has potential methane emissions of 20 tpy or greater. Although the standards and presumptive standards all require a 95 percent reduction in emissions, these differences in the applicability could result in a situation where a storage vessel has potential VOC emissions greater than 6 tpy (thus meaning it is an NSPS OOOO or NSPS OOOOa affected facility) but has potential methane emissions less than 20 tpy (thus is not an EG designated facility). In this

instance, the storage vessel would continue to be subject to NSPS OOOO or NSPS OOOOa but would not be subject to a state or federal rule via EG OOOOc. However, it would not result in a situation where the same storage vessel is subject to two rules. Therefore, the EPA proposes to conclude that the option of routing to a control device that achieves 95 percent reduction if potential methane emissions are greater than 20 tpy is viable. This is the only control option considered in the regulatory alternatives for storage vessels at marginal well sites.

vi. Gas Well Liquids Unloading

The EPA identified two control options for liquids unloading at

marginal gas well sites: (1) no control and (2) best management practices if an unloading technique is used that vents to the atmosphere. Tables 21 and 22

provide the estimated impacts of the two control options for a marginal well site.

Table 21. Cost Impacts of Gas Well Liquids Unloading Control Options for an Individual Marginal Well Site

Control Option	Capital Cost (\$)	Annual Cost (\$/yr)	Percentage of Mid-Range Profit (Gas Well)
No Control	\$0	\$0	0.0%
Best Management Practices	\$0	\$739	6.3%

Table 22. Emissions Impacts of Gas Well Liquids Unloading Control Options for an Individual Marginal Well Site

Control Option	Methane Emission Reduction (tpy)	VOC Emission Reduction (tpy)	Methane Cost Effectiveness (\$/ton)	VOC Cost Effectiveness (\$/ton)
No Control	0.00	0.00	N/A	N/A
Best Management Practices	0.63	0.18	\$1,171	\$4,224

The EPA considers both options to be viable. Therefore, (1) no control and (2) best management practices options were considered in the regulatory alternatives analysis.

i. Regulatory Alternatives and BSER Determination

As discussed above in section III.K.1.c of this preamble, the EPA is evaluating BSER at the marginal well site level, considering the combination of emissions reductions, emissions reduction compared to compliance costs (*i.e.*, cost effectiveness), compliance costs compared to profits (*i.e.*, cost reasonableness), and impact on nationwide emissions. This section provides an overview of the regulatory alternatives evaluated, as well as the selection of BSER for marginal well sites.

i. Weighting Factors

As also noted above, the EPA recognizes that there is substantial variation in the equipment and operations at oil and natural gas well sites, even for sites that produce similar amounts of oil and/or natural gas. This BSER analysis considers differences in well sites by using weighted averages of the number and types of emission

sources present.⁴¹⁹ By using weighted averages, the EPA is able to consider the overall impact of different options and alternatives. These weighted averages are based on data, where available, or on our estimates based on knowledge of the industry.⁴²⁰ The list that follows includes the weighting factors considered in the alternatives analysis.

- Fugitive Emission Components.
 - Fraction of marginal wells sites by well type:
 - Single wellhead—30 percent
 - Small well—10 percent
 - Multi-wellhead—10 percent
 - Well sites with major production and processing equipment—50 percent

⁴¹⁹EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

⁴²⁰U.S. EPA (2026 Marginal Well TSD). Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Proposed Amendments. Marginal Well Technical Support Document (TSD) for the Proposed Amendments to the New Source Performance Standards (NSPS) and Emissions Guidelines (EG). 40 CFR part 60, subpart OOOOb (NSPS) 40 CFR part 60, subpart OOOOc (EG). August 2025.

- Process Controllers. Fraction of marginal wells with natural gas-driven controllers—50 percent
- Pumps. Fraction of marginal well sites with:
 - Natural gas-driven pneumatic pumps—10 percent
 - Natural gas-driven pneumatic pumps at well sites that have electrical service or at well sites that do not have electrical service but have 3 or more diaphragm pumps—50 percent
- Associated Gas. Fraction of marginal well sites that are oil well sites and:
 - Have associated gas that is not currently routed to sales—50 percent
 - Have associated gas with the potential to emit more than 20 tpy methane and that is not currently routed to sales—10 percent
 - Have associated gas with the potential to emit more than 40 tpy methane and that is not currently routed to sales—0 percent
- Storage Vessels. Fraction of marginal well sites that are oil well sites and:
 - Have storage vessels—50 percent
 - Have storage vessels with 20 tpy or more uncontrolled methane emissions—3 percent
- Liquids Unloading. Fraction of marginal well sites that are gas well sites and have liquids unloading

<p>that vents to the atmosphere—50 percent</p> <ul style="list-style-type: none">• Fraction of marginal well sites with an existing control device—4 percent <p>The Marginal Well TSD provides the basis for these factors. The EPA requests</p>	<p>comment on the proposed weighting factors used in the BSER analysis. (Question III.10d)</p> <p>ii. Marginal Well Regulatory Alternatives</p> <p>Utilizing the weighting factors, the viable control options for each</p>	<p>emissions source at a marginal well site were combined into four regulatory alternatives. These regulatory alternatives are summarized below in table 23.</p> <p>BILLING CODE 6560-50-P</p>
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Table 23. Marginal Well Regulatory Alternatives Considered

Regulatory Alternative/ Emissions Source	Requirement
<u>Regulatory Alternative 1</u>	
Fugitive Components	Quarterly AVO
Controllers	Continuous Bleed - Low Bleed Intermittent Vent –Quarterly AVO
Pumps	Route to Existing Control Device
Associated Gas (Oil Wells Only)	No Control
Storage Vessels	95% Control or Flare if Uncontrolled Emissions are 6 tpy or greater VOC or 20 tpy or greater methane
Liquids Unloading (Gas Wells Only)	No Control
<u>Regulatory Alternative 2</u>	
Fugitive Components	Quarterly AVO
Controllers	Continuous Bleed - Low Bleed Intermittent Vent - Quarterly AVO
Pumps	Route to Existing Control Device
Associated Gas (Oil Wells Only)	95% Control or Flare if Methane Content in Associated Gas is 20 tpy or greater
Storage Vessels	95% Control or Flare if Uncontrolled Emissions are 6 tpy or greater VOC or 20 tpy or greater methane
Liquids Unloading (Gas Wells Only)	No Control
<u>Regulatory Alternative 3</u>	
Fugitive Components	Quarterly AVO
Controllers	Continuous Bleed - Low Bleed Intermittent Vent - Quarterly AVO
Pumps	Zero at Sites with Electricity and Sites with 3 or More Pumps, Route to Existing Control Device if No Electricity and Less than 3 pumps
Associated Gas (Oil Wells Only)	95% Control or Flare if Methane Content in Associated Gas is 20 tpy or greater
Storage Vessels	95% Control or Flare if Uncontrolled Emissions are 6 tpy or greater VOC or 20 tpy or greater methane
Liquids Unloading (Gas Wells Only)	Best Management Practices
<u>Regulatory Alternative 4</u>	
Fugitive Components	Quarterly AVO plus Annual OGI at sites with major processing and production equipment
Controllers	Continuous Bleed - Low Bleed Intermittent Vent – Annual OGI and Quarterly AVO
Pumps	Route to Existing Control Device
Associated Gas (Oil Wells Only)	95% Control or Flare if Methane Content in Associated Gas is 20 tpy or greater
Storage Vessels	95% Control or Flare if Uncontrolled Emissions are 6 tpy or greater VOC or 20 tpy or greater methane
Liquids Unloading (Gas Wells Only)	No Control

and process controllers, requirements for low bleed controllers, and routing emissions from pumps to existing control devices. Regulatory Alternative 2 adds control requirements for marginal oil wells with associated gas containing 20 tpy methane or greater and requirements for storage vessels with the potential to emit 20 tpy or greater. Regulatory Alternative 3 then adds BMPs for liquids unloading

emissions at marginal gas wells and requirements to install zero emission pumps at sites where electricity is available or that have three or more pumps to the requirements in Regulatory Alternative 2. Regulatory Alternative 4 revises Regulatory Alternative 2 to add a requirement for annual OGI (in addition to quarterly AVO) for large well sites for fugitives and process controllers.

j. BSER Determination

As described in section III.K.1.c of this preamble, the EPA is determining the BSER for marginal wells based on the site-wide impacts and site-wide cost reasonableness. Tables 24 and 25 provide the well-site-wide weighted average impacts for the four regulatory alternatives presented in table 22.

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Table 24. Weighted Average Cost Impacts of Marginal Well Regulatory Alternatives

	Weighted Average Capital Cost (\$ per marginal well site)	Weighted Average Annual Cost (\$/yr per marginal well site)	Weighted Average Annual Cost Comparison to Profit ^a
Regulatory Alternative 1			
Marginal Oil Wells	\$3,614	\$2,572	6.0%
Marginal Gas Wells	\$307	\$1,387	11.8%
Regulatory Alternative 2			
Marginal Oil Wells	\$10,229	\$4,943	11.5%
Marginal Gas Wells	\$307	\$1,387	11.8%
Regulatory Alternative 3			
Marginal Oil Wells	\$11,133	\$5,101	11.8%
Marginal Gas Wells	\$1,210	\$1,914	16.2%
Regulatory Alternative 4			
Marginal Oil Wells	\$11,808	\$6,522	15.1%
Marginal Gas Wells	\$1,885	\$2,966	25.1%

^a Mid-range profit scenario.

Table 25. Weighted Average Emissions Impacts of Marginal Well Regulatory Alternatives

	Weighted Average Methane Emissions Reduction (tpy per marginal well site)	Cost effectiveness (\$ per ton of methane reductions)
Regulatory Alternative 1		
Marginal Oil Wells	1.6	\$1,597
Marginal Gas Wells	1.6	\$869
Regulatory Alternative 2		
Marginal Oil Wells	4.3	\$1,158
Marginal Gas Wells	1.6	\$869
Regulatory Alternative 3		
Marginal Oil Wells	4.6	\$1,108
Marginal Gas Wells	2.2	\$853
Regulatory Alternative 4		
Marginal Oil Wells	6.0	\$1,091
Marginal Gas Wells	3.3	\$898

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The EPA considers the annual costs in relation to the annual predicted emissions reductions (*i.e.*, the cost effectiveness as represented in Table 25) to be reasonable for all four regulatory alternatives. Further, the EPA considers the incremental cost effectiveness between Regulatory Alternative 1 and Regulatory Alternative 2, and between Regulatory Alternative 2 and Regulatory Alternative 3, or Regulatory Alternative 4, to be reasonable. As such, based on an evaluation of the EPA's more traditional cost metric for previous oil and natural gas regulations (cost effectiveness), all alternatives are cost reasonable.

Further, as shown in Table 24, the EPA also considered the annual compliance costs in relation to the profit levels, *i.e.*, the cost reasonableness of each regulatory alternative. First, based on the weighted average impacts, the EPA proposes to conclude that the additional emissions reduction achieved for Regulatory Alternative 2 over Regulatory Alternative 1 is reasonable given the additional costs. Put another way, the EPA ruled out Regulatory Option 1 because there were other cost reasonable alternatives that achieved more emission reductions. In addition, some marginal oil wells could have associated gas methane contents

considerably greater than the representative levels assumed in the weighted averages. Regulatory Alternative 2 includes requirements that would cover these higher-emitting situations, whereas Regulatory Option 1 does not.

To further assess the remaining options, the EPA also considered whether the annual compliance costs specifically for large marginal well sites (*i.e.*, those with major production and processing equipment) were cost reasonable in relation to profits. The EPA also considered the profits at two different production levels to evaluate cost reasonableness for both lower production marginal wells (less than or equal to 6 boe per day) and higher production marginal wells (greater than 6 and less than or equal to 15 boe per day). As noted above in section III.K.1.i.i of this preamble, the BSER analysis uses weighted averages of the number and types of emission sources present and assumes that 50 percent of well sites are well sites with major production and processing equipment (*i.e.*, "large" well sites). The remaining well sites are divided between single wellhead, multi-wellhead and small well sites. The EPA notes that most of the differences in requirements (and thus impacts) between Regulatory

Alternative 2 and Regulatory Alternatives 3 and 4 only apply to large well sites. Thus, for consideration of whether Regulatory Alternative 3 or 4 is cost reasonable, the EPA specifically considered the total compliance costs at large well sites. For the regulatory alternatives considered, total site-wide costs for a marginal well site are also expected to be greatest for large well sites due to the presence of major production and processing equipment. Additionally, for these large marginal well sites, the total compliance costs are expected to be even greater for those sites with larger production volumes (*i.e.*, those with greater than 6 boe per day and less than or equal to 15 boe per day) due to the potential to surpass the thresholds being considered that would trigger requirements to control emissions from storage vessels and associated gas. Conversely, the Agency would not expect these compliance costs at large well sites with lower production volumes. The EPA also notes that 86 percent of marginal wells have production volumes less than or equal to 6 boe per day, as discussed in section III.K.1.d of the preamble. Thus, the EPA additionally considered the impacts on these subsets of large well sites. Table 26 compares the unweighted annual costs for large well sites (*i.e.*,

well sites that contains major production and processing equipment) with relevant compliance costs assuming equipment as described in large marginal well model plant to the

mid-range profit scenario for two different production level groups: marginal wells up to 6 boe per day and marginal wells with greater than 6 and less or equal to 15 boe per day. This

additional information provides greater transparency about the cost impacts associated with large well sites.

Table 26. Comparison of Unweighted Annual Costs to Profit for Lower Production (less than or equal to 6 boe/day) and Higher Production (greater than 6 and less than or equal to 15 boe/day) Marginal Well Sites with Major Production and Processing Equipment

	Capital Cost (\$ per marginal well site)	Annual Cost (\$/yr per marginal well site)	Annual Cost Comparison to Profit ^b for Marginal Wells ≤ 6 boe/day	Annual Cost Comparison to Profit ^b for Marginal Wells > 6 and ≤ 15 boe/day
Regulatory Alternative 1				
Marginal Oil Wells	\$8,186	\$2,697	12.6%	1.6%
Marginal Gas Wells	\$8,186	\$2,697	61.6%	5.7%
Regulatory Alternative 2				
Marginal Oil Wells	\$140,487	\$50,108	12.6% ^c	29.2%
Marginal Gas Wells	\$8,186	\$2,697	61.6%	5.7%
Regulatory Alternative 3				
Marginal Oil Wells	\$141,831	\$50,799	15.8% ^c	29.6%
Marginal Gas Wells	\$9,530	\$4,127	94.3%	8.8%
Regulatory Alternative 4				
Marginal Oil Wells	\$141,837	\$53,200	25.9% ^c	30.8%
Marginal Gas Wells	\$9,536	\$5,539	126.5%	11.8%

^a Annual costs assuming marginal wells contain major production and processing equipment and all other emission sources. Also assume that associated gas contains greater than 20 tpy methane (95 percent reduction/flare is required) and that storage vessels have methane emissions less than 20 tpy (no control is required).

^b Mid-range profit scenario.

^c As noted previously, the EPA assumes that marginal wells with less than or equal to 6 boe per day will not be above the 20 tpy methane threshold for the requirement to flare associated gas in this option. Thus, the costs associated with flaring of associated gas are not included in the unweighted total costs for comparison to profits for oil wells with less than or equal to 6 boe per day production.

As shown in table 26, the annual compliance costs associated with regulatory options 4 for large marginal well sites are cost unreasonable for the majority of large marginal gas well sites, with costs greater than 125 percent of profits. The EPA considers Regulatory Alternative 3 to also be cost unreasonable with costs greater than 90

percent of profits for the majority of large marginal gas well sites. The EPA also considered the additional emissions reduction of Regulatory Alternative 3 compared to Regulatory Alternative 2. For Regulatory Alternative 2, using the data in tables 23 and 24, the Agency estimates that the emissions reduction per percentage of

profits for large marginal gas well sites (for all production levels) is 0.25 tons of methane per percentage of profits. For Regulatory Alternative 3, the incremental reductions from adding best management practices and zero emission pumps drop to only 0.07 tons of methane per additional percentage of profits. Thus, Regulatory Option 2

achieves greater emissions reductions for the cost. Of the remaining options, Regulatory Alternative 2 achieves the greatest emissions reductions, and is cost reasonable. It is thus the best system of emission reduction for marginal well sites.

Therefore, the EPA is proposing Regulatory Alternative 2 for marginal wells. The following subsection provides more detail on the specifics of the proposed requirements.

k. Proposed Marginal Well Requirements

i. Affected/Designated Facility Definition

The affected/designated facility is defined as a marginal well site. The EPA is proposing definitions for both a marginal well and a marginal well site that are based on oil and natural gas production levels.

Specifically, the EPA proposes the following definitions:

Marginal well means a well that produced less than or equal to 15 barrels of oil equivalent per day over the prior 12-month period.

Marginal well site means a well site with only marginal wells and the total oil and natural gas produced from all the wells at the site is less than or equal to 15 barrels of oil equivalent per day over the prior 12-month period.

The EPA is also proposing definitions for “non-marginal well” and “non-marginal well site.” Specifically, the EPA proposes the following definitions:

Non-marginal well means a well that produced an annual average of greater than 15 barrels of oil equivalent produced per day over the prior 12-month period.

Non-marginal well site means a well site where the total cumulative oil and natural gas produced from all the wells at the site is greater than 15 barrels of oil equivalent per day over the prior 12-month period.

One aspect of these definitions is what constitutes a new marginal well site affected facility subject to NSPS OOOOb and an existing marginal well site designated facility subject to a state or federal plan via EG OOOOc. The EPA is proposing that if any emission source at an existing marginal well site is modified or reconstructed, the entire well site becomes an NSPS OOOOb affected facility (or facilities, if the marginal status no longer applies post-modification). The specific instances that constitute a modification to an existing marginal well site include the following.

- If a new well is drilled at an existing marginal well site.

- If an existing well at a marginal well site is hydraulically fractured or hydraulically refractured.

- A well at the well site is stimulated in any manner beyond that of normal well maintenance (e.g., acid simulation, recompletion to a new zone) for the purpose of increasing production, including well workover.

- A well at the well site is shut-in for the purpose of increasing production from another well at the site.

- If the number of natural gas-driven process controllers is increased by one or more.

- If a storage vessel is added to a tank battery at an existing marginal well site, if one or more storage vessels at an existing marginal well site are replaced such that the cumulative storage capacity of the existing tank battery increases, or if a tank battery at an existing marginal well site receives additional crude oil, condensate, intermediate hydrocarbons, or produced water throughput from actions, including but not limited to, the addition of operations, the addition of a production well, or changes to operations of a production well (including hydraulic fracturing or refracturing of the well).

- If the number of natural gas-driven pumps is increased by one or more.

Another aspect of the marginal well affected/designated facility definition is how owners and operators must demonstrate that production levels are below 15 boe per day. Owners and operators must base this determination on the daily combined oil and natural gas production at the well site for each day during the previous 12 months divided by the number of operating days in the 12-month period. A facility may make this initial determination at any time. After the facility makes the initial determination that the site has production levels below 15 boe per day, any modification, reconstruction, or action taken that will increase production from one or more wells at the site triggers a requirement to make a new determination. Owners and operators must complete this new determination within 45 days of completion of the activity using information based on the daily average production level from the first 30 days of operation following completion of the activity.

The proposed requirements in NSPS OOOOb and the model rule in EG OOOOc allow facilities to comply with the requirements that apply to marginal well sites after submission of a notification of marginal well site determination. For facilities subject to NSPS OOOOb, if this determination

shows that production from the site is above 15 boe per day, the proposed requirements of NSPS OOOOb are that the facility would no longer be a marginal well site affected facility and must comply with the applicable requirements of NSPS OOOOb for affected facilities that are not marginal well site affected facilities by the dates described in 40 CFR 60.5370b. For facilities subject to a state or Federal plan implementing EG OOOOc that completed a modification or reconstruction, the proposed requirements are that the facility would become subject to NSPS OOOOb and must comply with the applicable requirements of NSPS OOOOb for sites that are not marginal well sites by the dates described in 40 CFR 60.5370b. For facilities subject to a state or Federal plan implementing EG OOOOc that did not complete a modification or reconstruction, the proposed model rule in EG OOOOc requires that the facility follow the applicable requirements of EG OOOOc for designated facilities that are not marginal well site designated facilities by the dates described in 40 CFR 60.5370b.

ii. Proposed Standards

The EPA is proposing the same standards for marginal wells in both the NSPS OOOOb and EG OOOOc. The following paragraphs discuss these proposed standards.

For fugitive component emissions, the EPA is proposing to require that owners and operators conduct quarterly AVO inspections to detect any leaking or malfunctioning components. Specifically, the Agency is proposing that AVO inspections must include all fugitive emissions components at the marginal well site, except buried yard piping and associated components (e.g., connectors). The AVO inspections must include a visual inspection of all thief hatches and other openings on storage vessels (or tank batteries) to ensure that they are kept closed and sealed at all times except during times of adding or removing material, inspecting or sampling material, or during required maintenance operations. The AVO inspections must also include a visual inspection of all separator dump valves to ensure the dump valve is free of debris and not stuck in an open position. If leaks or malfunctions are found, a first attempt at repair shall be made no later than 15 calendar days after detection of fugitive emissions that were identified using AVO. Repair shall be completed as soon as practicable, but no later than 15 calendar days after the first attempt at repair, subject to delay of repair provisions. If using OGI or

Method 21 of appendix A-7 to this part, the first attempt at repair shall be made no later than 30 calendar days after detection of fugitive emissions that were identified and repair shall be completed as soon as practicable, but no later than 30 calendar days after the first attempt at repair.

In addition, the EPA is proposing that these quarterly AVO inspections must include inspections of intermittent vent natural gas driven process controllers to identify situations when the controllers are emitting during idle periods. Specifically, these inspections must include AVO-based inspections of each natural gas-driven intermittent vent process controller to ensure that it is not obviously emitting to the atmosphere during idle periods. Using manufacturers' product information and company-specific procedures, the inspection must identify indicators of obvious emissions beyond designed de minimis seal seepage rates during idle periods, including audible perception of continuous flow, hissing sounds, and abnormal clicking or chattering; olfactory detection of odors; and visual detection of leaks, cracks, holes, gaps, corrosion, damage, missing pieces, or other visual or physical flow indications of emissions.⁴²¹ When monitoring identifies emissions to the atmosphere from a natural gas-driven intermittent vent controller during idle periods, an owner or operator must take corrective action by cleaning, repairing, or replacing the natural gas-driven intermittent vent process controller within 5 calendar days of the date the emissions to the atmosphere were detected. After the repair or replacement of a natural gas-driven intermittent vent process controller, an owner or operator must re-survey the natural gas-driven intermittent vent process controller within five days to verify that it is not venting emissions during idle periods.

Under the EPA's proposal, if continuous bleed natural gas driven process controllers are used, they must have a bleed rate of 6 scf/hour or less. In specific circumstances in which the owner/operator demonstrates that there is a functional need, including but not limited to response time, safety, or positive actuation, continuous bleed process controllers with a bleed rate higher than 6 scf/hour may be used.

For pumps at marginal well sites, the Agency is proposing standards that require that VOC and methane emissions from all natural gas-driven

pumps at the marginal well site affected facility be routed to a control device that reduces emissions by 95 percent if a control device with at least this emissions reduction capability is already available onsite, or be reduced by less than 95 percent if a control device is onsite but is not capable of reducing VOC and methane emissions by 95 percent or more. Alternatively, pump emissions may be routed to a process or pumps not driven by natural gas may be used.

For associated gas, the EPA is proposing that if the methane content in the associated gas produced at the well site is 20 tpy or greater, the associated gas must be routed through a closed vent system to a control device that achieves 95 percent reduction in emissions or greater, or route through a closed vent system to a flare that meets the applicable flare requirements. Well sites with less than 20 tpy methane in the produced associated gas have no control requirements, although a demonstration proving the methane content is less than 20 tpy is required. Note that owners and operators of marginal well sites also can comply by routing the associated gas to a sales line or using it for another purpose.

For storage vessels, the EPA is proposing in NSPS OOOOb that if the potential VOC emissions are 6 tpy or greater or the potential methane emissions are 20 tpy or greater, the emissions must be routed through a CVS to a control device that achieves 95 percent reduction in emissions or greater, or route through a CVS to a flare that meets the applicable flare requirements. For EG OOOOc, this applicability is based only on 20 tpy methane.

Since some well sites are expected to transition between the non-marginal and marginal well site subcategories, there will be situations where a site is already subject to the provisions of NSPS OOOOb or state plans under EG OOOOc that apply to non-marginal well sites prior to making the determination that the well is a marginal well site. In these situations, the EPA is proposing that these well sites would continue to be subject to some requirements specific to non-marginal wells after determining the well site is a marginal well site. There are two circumstances under which owners or operators of a well site that transitions from the non-marginal well requirements to the marginal well requirements would be required to maintain compliance with certain provisions that apply to non-marginal wells. These circumstances include: the installation of zero emission controllers in accordance with 40 CFR 60.5390b(a)

in NSPS OOOOb; and the installation of zero emission pumps in accordance with 40 CFR 60.5393b(a) in NSPS OOOOb. In each of these cases, the owner or operator has already made the capital investment necessary to achieve compliance, and the ongoing costs of maintaining compliance are minimal and potentially negligible. The EPA is proposing the same for the model rule in EG OOOOc (40 CFR 60.5394c(a) and 60.5395c(a)).

Accordingly, the proposed provisions require these emission sources at marginal well sites to continue to meet the more stringent standards, rather than replace compliant equipment with higher emitting natural gas driven controllers or pumps. If additional controllers or pumps are installed at the marginal well site, they must also conform to the zero emission requirements.

I. Request for Comments

As noted in section III.K.1.d of this preamble, the EPA is proposing a single subcategory for marginal well sites based on 15 boe per day. Some industry representatives have suggested that the Agency should create separate subcategories of marginal wells to reflect the differences in production levels, emissions, and profits. One suggestion was that two marginal well subcategories be created: (1) wells with average production levels of 6 boe per day or less, and (2) wells with average production levels greater than 6 and less than or equal to 15 boe per day. Consistent with the approach proposed above for marginal well sites, the EPA is requesting comment on a subcategorization approach to marginal well sites that creates two subcategories of marginal well sites, where there would be different standards for well sites with average production levels of 6 boe per day or less and well sites with average production levels greater than 6 boe and less than or equal to 15 boe per day. This subcategorization would likely result in more stringent standards for the higher producing subcategory (with higher profits) and less stringent standards for the lower emitting subcategory. (Question III.10e) Although stakeholders suggested the aforementioned cut-off levels, the EPA is requesting comment on whether there are other reasonable ways to subcategorize based on production (e.g. would subcategories at other production levels be more appropriate) or whether further distinctions may be needed to appropriately target meaningful emissions reductions. (Question III.10f)

The EPA is also soliciting comment on an alternative set of requirements if

⁴²¹ Eben Thoma, OCAP-RAD-MSB (2026). Memorandum to Docket ID No. EPA-HQ-OAR-2025-0163. Examples of Pneumatic Controller Operation, Troubleshooting, and Repair Information.

the EPA establishes two marginal well site subcategories. The Agency is specifically requesting comment on the set of compliance options for a dual subcategory for marginal well sites outlined in the following paragraph. (Question III.10g)

The EPA assessed the previously discussed regulatory alternatives for the two subcategories of marginal well sites described above. Using the same analysis and affordability approach as described in the previous sections, the Agency proposes to determine that if the EPA were to propose two subcategories for marginal well sites of (1) less than or equal to 6 boe per day and (2) greater than 6 boe and less than or equal to 15 boe per day, each subcategory would warrant a different set of standards. Specifically, if the EPA proposed a subcategory of marginal wells with less than or equal to 6 boe per day, the resulting compliance requirements would be similar to the selected option but exclude the requirement to flare associated gas with greater than 20 tpy methane in this subcategory. The EPA would propose that for this subcategory, the control option to flare associated gas would be cost unreasonable and the Agency also does not expect marginal wells in this subcategory to surpass the 20 tpy methane threshold. For the subcategory of marginal wells with production greater than 6 and less than or equal to 15 boe per day the requirements would likely be more stringent. The EPA preliminarily assessed that annual OGI and quarterly AVO for large well sites would be cost reasonable for controlling emissions from fugitives and process controllers for marginal well sites with greater than 6 boe and up to 15 boe per day. For further details on this scenario, see the Marginal Well TSD, available in the in the docket for the proposed rule. In addition, for purposes of setting fugitive emissions monitoring requirements for marginal wells, the EPA seeks comment (including data and detailed information) on how often fugitive emissions are found at marginal well sites, the approximate volume of gas emitted during a typical fugitive emissions event at a marginal well site, estimates regarding the approximate length of time that fugitive events last at marginal well sites, and the cost of conducting fugitive emissions monitoring at a marginal well site (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs). (Question III.10h).

The EPA is also soliciting comment on the cost effectiveness and cost

reasonableness of the fugitive emissions monitoring requirements in this proposal for marginal wells.

Specifically, the EPA is requesting information on the appropriate frequency, type of monitoring technology, equivalent monitoring technologies for various equipment types, and other relevant information that may improve EPA's cost effectiveness and cost reasonableness analysis, allowing the EPA to better target emission reductions. (Question III.10i). The Agency also seeks comment on whether the fugitive emissions monitoring requirements in NSPS OOOOb and EG OOOOc are necessary for marginal wells considering this information. (Question III.10j).

This proposal also includes proposed instances that constitute a modification to an existing marginal well site. The EPA is seeking comment on what level or type of stimulation for the purposes of increased production could result in increases in emissions. (Question III.10k)

2. Option 2. Subcategorization of Conventional Wells

Another method of characterizing wells is by the resource type; U.S. onshore oil and gas production consists of both conventional and unconventional resources, which typically require different extraction approaches. Conventional wells are relatively shallow and are drilled vertically (or slightly deviated) to access structural reservoirs with permeability typically sufficient for hydrocarbon flow without intensive stimulation. Unconventional wells extract hydrocarbons from low permeability shale and other tight formations or formations containing viscous oils that resist flow. Unconventional wells can be much deeper and are typically horizontally drilled and hydraulically fractured to create flow. Conventional well production sites usually service single well sites while unconventional well sites trend toward integrated operations that can support up to 10 or more wells. Conventional wells generally operate at lower wellhead pressures and production rates. Unconventional wells exhibit much higher wellhead pressures coupled with high initial hydrocarbon and produced water production rates. Conventional wells typically experience increasing produced water loads over time that must be managed to maintain production.^{422 423 424} These differences

in conventional and unconventional wells are expected to result in differences in the types and amount of equipment at the site and the number of potential emission points. With up to an order of magnitude higher initial well head pressures and high initial flow rates, unconventional well sites can require multistage heated gas, liquid, and water separation, with additional associated components and controls, to properly manage production.^{425 426} In general, the EPA expects that unconventional well sites would have more fugitive components and major production and processing equipment at the site than conventional well sites. Unconventional multi-well production sites with common header produced water and condensate tank batteries may also have a higher propensity for process upset and malfunction-related emissions compared to conventional sites.⁴²⁷

As an alternative to defining a marginal well subcategory based on production levels, the EPA is co-proposing an option to define a conventional well site subcategory based on the type of formation in which the well is drilled. The EPA considered alternative definitions to establish a conventional well site subcategory. One stakeholder noted that conventional wells typically have depths less than 8,000 feet.⁴²⁸ Supporting information provided by the stakeholder also included a letter asserting that there are fundamental differences between high-GOR shale wells and low-GOR conventional wells and suggested that the EPA classify oil and gas producers into distinct categories using GOR, production rate, and cumulative production as primary indicators.⁴²⁹

⁴²² Omara et al. (2016). Methane emissions from conventional and unconventional natural gas production sites in the Marcellus Shale Basin. <https://doi.org/10.1021/acs.est.5b05503>.

⁴²³ Haines et al. (2024). How Quickly Do Oil and Gas Wells "Water Out"? Quantifying and Contrasting Water Production Trends. <https://doi.org/10.1007/s11053-024-10308-6>.

⁴²⁴ Boschee, P. (2014). Design of Onshore Production Systems for Unconventional Resources. Oil and Gas Facilities, 3(04), 34–37, <https://doi.org/10.2118/0814-0034-OGF>.

⁴²⁵ Conder M. and Schrorer A. (2015). Production Facility Design, Simulation Workflow Optimizes Facility Design For Producing Multiwell Pads. The American Oil and Gas Reporter. <https://www.aogr.com/magazine/editors-choice/simulation-workflow-optimizes-facility-design-for-producing-multiwell-pads>.

⁴²⁶ Johnson et al. (2022). Methane emissions from oil and gas production sites and their storage tanks in West Virginia. <https://doi.org/10.1016/j.aeoa.2022.100193>.

⁴²⁷ Berecxo LLC (2025). Letter Mr. Aaron Szabo. Re: Revised Rule-Making Recommendation. October 7, 2025.

⁴²⁸ Letter to Berecxo LLC from Reza Barati. Subject: Recommendation for Categorizing Oil and

⁴²⁹ Society of Petroleum Engineers (SPE), 2018 (2022), Petroleum Resources Management System, V1.03, ISBN 978–1–61399–994–3.

Although GOR and vertical depth could be reasonable indicators of the type of well, the EPA is proposing a definition of unconventional wells that is based on widely accepted resource type and required extraction need descriptions, drawn, in comparison to conventional resources.⁴³⁰ The EPA believes it is appropriate to base definitions on underlying resource type because the complexity of extraction and surface processing, coupled with production intensity, can differ between resource types, which could lead to differences in emission potential. The Agency is proposing the following definitions associated with this option.

Unconventional formation means a low-permeability geological formation typically composed of shale or other similar fine-grained, organic-rich sedimentary rocks—where oil and natural gas generally remain in the source rock unless natural or artificial fractures occur. Unconventional formations can also include somewhat more porous and permeable formations that contain higher viscosity oils that resist flow. These formations cannot be produced at economic flow rates or in economic volumes except by vertical or horizontal well bores stimulated by intensive multistage hydraulic fracture treatments or by using multilateral well bores or other techniques to expose more of the formation to the well bore or to generate flow.

Unconventional well means a bore hole drilled or being drilled for the purpose of or to be used for the production of oil and natural gas from an unconventional formation.

Conventional well means any well drilled for the purpose of producing oil or natural gas that is not an unconventional well.

Conventional well site means a well site with only conventional wells.

The EPA is also proposing to add to the definition of “well site” the phrase “this term encompasses both unconventional and conventional well sites.” The EPA requests comment on these definitions. (Question III.10I).

A key difference in conventional and unconventional wells is that unconventional wells typically decline quickly and have total productive lives of only 10 to 15 years, in contrast to conventional wells that can remain productive for several decades, often 40 to 50 years or longer.⁴³¹ Due to this decline curve, and the long history of conventional vertical well drilling compared to unconventional (primarily horizontal) wells, the vast majority of the lower production wells in operation in the U.S. (>90 percent) are

conventional vertically drilled wells.⁴³² As a result, the EPA proposes to conclude that the subset of total oil and gas wells that are conventional is largely the same subset of wells that have production levels of 15 boe per day or less (*i.e.*, marginal wells). The EPA is requesting comment on the conclusion that the subset of wells that are marginal largely overlaps with the subset that are conventional wells. (Question III.10M).

Due to this substantial overlap, all the concerns raised by petitioners and industry representatives that are summarized in section III.K.1.b for marginal wells are relevant for conventional wells. Since most conventional wells are lower production wells, these sites will largely have the same concerns about cost and affordability. As noted in this section, the EPA also expects that all conventional well sites will have fewer components and pieces of major production and processing equipment than unconventional well sites. The EPA also expects that the marginal well site representative emission sources are also generally representative for all conventional well sites, as the type of site is expected to correlate with the numbers of components and pieces of major production and processing equipment. Section III.k.1.f describes the well site representative emission sources for marginal wells, which also generally represent sources at conventional well sites. Thus, the Agency would expect conventional well sites to have similar emissions profiles to marginal well sites. Further, all other aspects of the marginal well site BSER analysis discussed in section III.K.1 for marginal well sites are also applicable to conventional well sites.

In conclusion, the EPA finds that the proposed BSER determination for marginal wells presented above in section III.K.1.j of this preamble is also applicable for the conventional well subcategory. Following is a summary of the proposed requirements for conventional wells under Option B.

a. Proposed Conventional Well Requirements

i. Affected/Designated Facility Definitions

The affected/designated well facility is defined as a conventional well site. The EPA is proposing definitions for unconventional formation, unconventional well, conventional well, and conventional well site. These

proposed definitions are provided above in the introduction to section III.K.2 of this preamble.

Perhaps the most significant difference between a marginal well site affected/designated facility under Option 1 and a conventional well affected/designated facility under Option 2 is that under Option 2, there would not be a requirement to demonstrate that production levels are below 15 boe per day for each well at the site. Rather, the owner or operator would only need to provide documentation that the well site meets the definition of a conventional well site. This difference would significantly reduce the regulatory burden associated with determining the correct well site subcategory and associated regulatory requirements as compared to Option 1. The EPA also expects that well sites would not switch between the different well site subcategories (conventional vs. unconventional), as could occur under Option 1, which would provide regulatory certainty for the subsector.

As with Option 1, one aspect is what constitutes a new conventional well site affected facility subject to NSPS OOOOb and an existing conventional well site designated facility subject to a state or federal plan via EG OOOOc. The EPA is proposing that if any emission source at an existing conventional well site is modified or reconstructed, the entire well site becomes an NSPS OOOOb affected facility (or facilities, if the conventional well status no longer applies post-modification). The specific instances that constitute a modification to an existing conventional well site include the following.

- If a new well is drilled at an existing conventional well site.
- If an existing conventional well at a conventional well site is hydraulically fractured or hydraulically refractured.
- A well at the conventional well site is stimulated in any manner beyond that of normal well maintenance (*e.g.*, acid simulation, recompletion to a new zone) for the purpose of increasing production.
- A well at the conventional well site is shut-in for the purpose of increasing production from another well at the site.
- If the number of natural gas-driven process controllers is increased by one or more.
- If a storage vessel is added to a tank battery at an existing marginal well site, if one or more storage vessels at an existing conventional well site are replaced such that the cumulative storage capacity of the existing tank battery increases, or if a tank battery at an existing conventional well site receives additional crude oil,

Gas Producers Based on GOR and Production Characteristics. (September 2, 2025)

⁴³⁰ SPE (2018).

⁴³¹ Bouchee (2014).

⁴³² EIA (2025). The Distribution of U.S. Oil and Natural Gas Wells by Production Rate with Data Through 2024, U.S. Energy Information Administration, U.S. DOE, Washington, DC 20585.

condensate, intermediate hydrocarbons, or produced water throughput from actions, including but not limited to, the addition of operations, the addition of a production well, or changes to operations of a production well (including hydraulic fracturing or refracturing of the well).

- If the number of natural gas-driven pumps is increased by one or more.

ii. Proposed Standards

The EPA is proposing the same standards for conventional wells in both the NSPS OOOOb and EG OOOOc. The proposed standards are identical to

those proposed for marginal wells discussed above in section III.1.k.ii of this preamble. Table 27 provides a brief summary of these requirements. More detail is provided in section III.1.k.ii of this preamble.

Table 27. Summary of Proposed Standards for Conventional Well Sites

Under Option B

Emission Source	Summary of Proposed Standard
Fugitive component emissions	Quarterly AVO and repair of leaks
Continuous bleed natural gas-driven controllers	Low bleed
Intermittent natural gas-driven controllers	Quarterly AVO and repair of malfunctions
Natural gas-driven pumps	Route to a control device that reduces emissions by 95 percent if a control device with at least this emissions reduction capability is already available onsite or be reduced by less than 95 percent if a control device is onsite but is not capable of reducing VOC and methane emissions by 95 percent or more.
Associated gas	If the methane content of the associated gas is 20 tpy or greater, route to a control device that achieves 95 percent reduction in emissions or greater, route to a flare that meets the applicable flare requirements, routing to a sales line, use for another purpose, or inject/reinject the gas to a well.
Storage vessels	If the potential VOC emissions are 6 tpy or greater or the potential methane emissions are 20 tpy or greater, the emissions must be routed to a control device that achieves 95 percent reduction in emissions or greater, or route to a flare that meets the applicable flare requirements. For EG OOOOc, this applicability is based only on 20 tpy methane.

In section III.K.1.k.i of this preamble, the EPA is proposing that in situations where a site is already subject to the provisions of NSPS OOOOb, or regulations in a state or federal plan under EG OOOOc, that apply to non-marginal well sites prior to determining the well site is marginal, that those marginal well sites would continue to be subject to some requirements specific to non-marginal wells after determining the well site is a marginal well site. Similarly, the EPA is proposing that in situations where a conventional well site is already operating in compliance with NSPS OOOOb such that the well

site already has zero emissions process controllers and pumps, that well site would continue to be subject to the associated standard for that equipment (the installation of zero emission controllers in accordance with 40 CFR 60.5390b(a) in NSPS OOOOb; and the installation of zero emission pumps in accordance with 40 CFR 60.5393b(a) in NSPS OOOOb). Put another way, even after finalization of a new subcategory for conventional wells that includes less stringent standards, those conventional well sites that were previously required to install and operate zero emissions process controllers and pumps would

continue to be subject to the more stringent standards for that equipment. However, as the Agency does not expect wells to change from conventional to unconventional or vice-versa, the EPA is not proposing similar provisions in the model rule under OOOOc.

b. Request for Comments

The Option 2 proposal would subcategorize oil and natural gas wells based on the resource type (*i.e.*, conventional or unconventional). Therefore, all conventional wells would be subject to less stringent standards, without regard to actual production

levels. Further, all unconventional wells would be subject to the NSPS OOOOb standards or the EG OOOOc presumptive standards, including the changes finalized as part of this action. The EPA is specifically requesting comment on the following questions. Is our conclusion that most conventional wells are low production and likely have lower emissions than unconventional wells correct? (Question III.10n) If not, what is the prevalence of high production conventional wells that have emissions equivalent to, or higher than, unconventional wells? (Question III.10o) Should all unconventional wells be subject to the more stringent standards even if production is low? (Question III.10p)

In addition, for purposes of setting fugitive emissions monitoring requirements for conventional wells, the EPA seeks comment (including data and detailed information) on how often fugitive emissions are found at conventional well sites, the approximate volume of gas emitted during a typical fugitive emissions event at a conventional well site, estimates regarding the approximate length of time that fugitive events last at conventional well sites, and the cost of conducting fugitive emissions monitoring at a conventional well site (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs). (Question III.10q)

The EPA is also soliciting comment on the cost effectiveness and cost reasonableness of the fugitive emissions monitoring requirements in this proposal for conventional wells. Specifically, the EPA is requesting information on the appropriate frequency, type of monitoring technology, equivalent monitoring technologies for various equipment types, and other relevant information that may improve EPA's cost effectiveness and cost reasonableness analysis, allowing the EPA to better target emission reductions. (Question III.10r)

The Agency also seeks comment on whether the fugitive emissions monitoring requirements in NSPS OOOOb and EG OOOOc are necessary for conventional wells considering this information. (Question III.10s)

This proposal also includes proposed instances that constitute a modification to an existing conventional well site. EPA is seeking comment on what level or type of stimulation for the purposes of increased production could result in increases in emissions. (Question III.10t)

IV. Technical Corrections and Clarifications

Following signature of the March 2024 Final Rule, stakeholders and the EPA identified inadvertent errors that require correction in the regulatory text of NSPSs OOOO, OOOOb, OOOOc, and EG OOOOc, including cross-reference, paragraph designation, typographical errors, and instances with needed clarifications present. The IFR published in August of 2024 ("August 2024 IFR") addressed several of these issues.⁴³³

Some corrections and clarifications identified prior to the publication of the August 2024 IFR were not included in the August 2024 IFR. Additional corrections and clarifications were also identified after the August 2024 IFR's publication in the **Federal Register**. The EPA proposes additional corrections and clarifications not addressed in the August 2024 IFR with this action. Section IV.A of this preamble includes a discussion of our proposed changes to NSPS subparts OOOO and OOOOb; section IV.B includes a discussion of our proposed changes to NSPS subpart OOOOb; and section IV.C includes a discussion of our proposed changes to EG OOOOc.

A. NSPS Subparts OOOO and OOOOb Technical Corrections and Clarifications

1. Testing Range Requirement for Manufacturer's Performance Test for Combustion Control Devices

The March 2024 Final Rule prescribes performance testing procedures for control devices. More specifically, 40 CFR 60.5413b(d) and 40 CFR 60.5413c(d) provide a procedure for the performance testing of a control device conducted by the device manufacturer, referred to as the "Manufacturers' Performance Test" (MPT). While not specifically raised by the petitioners, in this proposed rule the EPA proposes an alternative option to clarify the four firing rate settings prescribed.

Currently, 40 CFR 60.5413b(d) prescribes four firing rate settings of (1) 90–100 percent of the maximum design rate of the control device, (2) 70–100–70 percent of the maximum design rate of the control device, (3) 30–70–30 percent of the maximum design rate of the control device, and (4) 0–30–0 percent of the maximum design rate of the control device, where "0 (zero) percent" represents the minimum firing rate of the control device. In this proposed rule, the EPA proposes to clarify that the actual firing rate percent values tested at are approximate (to the

extent practicable). The EPA also proposes an alternative to the 0, 30, 70, 90, and 100 percent firing rate settings at the same 70, 90, and 100 percent testing values. The alternative replaces the 0 and 30 percent values with a minimum firing rate achievable in practice by the control device, as well as a firing rate percent equally spaced between the minimum firing rate and the 70 percent firing rate. These proposed changes impact NSPS OOOO (40 CFR 60.5413(d)(2)) and NSPS OOOOb (40 CFR 60.5413a(d)(2)).

The EPA also proposes to clarify that the testing percent values are approximate (to the extent practicable), since owners and operators may not have the ability to achieve testing at an "exact" percent value in practice. Moreover, the EPA proposes to allow an alternative to the prescribed 0 and 30 percent firing rates to perform testing at. The EPA justifies this alternative since on some control devices, based upon the design and operation of the device, the minimum firing rate may be *greater than* 30 percent of the maximum design rate of the control device. This would render the 30 percent firing rate test moot since a 30 percent firing rate cannot be achieved in practice by the device. By providing this alternative, four firing rates will still be tested, providing a representative range of operation successfully demonstrated by the control device.

2. Connector Monitoring Under NSPS Subparts OOOO and OOOOb

NSPS subparts OOOO and OOOOb point to NSPS subpart VVa for connector monitoring. The connector monitoring provisions in 40 CFR 60.482–11a (Standards: Connectors in gas/vapor service and in light liquid service) that applied to gas processing plants were removed from NSPS subpart VVa. The EPA proposes to incorporate these provisions into NSPS subparts OOOO and OOOOb. These proposed changes correct an omission of requirements that resulted from the connector provisions being removed from 40 CFR 60.482–11a and do not change the requirements that have applied and would apply.

When implementing the changes to incorporate the NSPS subpart VVa connector provisions into NSPS OOOO, the EPA identified an inadvertent error at 40 CFR 60.5400(a). The current regulatory text requires compliance with the requirements of 40 CFR 60.482–1a(a), (b), and (d) and did not cite paragraph (e) which includes the <300 hours per year in service exclusion. The EPA proposes to change the current regulatory text to require compliance

⁴³³ 91 FR 18056 (April 9, 2026).

with the requirements of 40 CFR 60.482–1a(a), (b), (d) and (e). This proposed change is consistent with NSPS OOOOa and with the record requirement cited in 40 CFR 60.486a (now included in 40 CFR 60.542(c)(4)(ii)). These changes are made in 40 CFR 60.5400, 60.5401, 60.5421, and 60.5422 of NSPS subpart OOOO, and 60.5400a, 60.5401a, 60.5421a, and 60.5422a of NSPS subpart OOOOa.

3. CBI Email Address

The EPA proposes to update the CBI email address in NSPS subpart OOOOa at 40 CFR 60.5420a(b)(9)(i)(A) and 60.5420a(b)(11)(i) to reflect a change of address to ocapcbi@epa.gov.

4. Cross-Reference Technical Correction

The EPA proposes to revise 40 CFR 60.5420a(b)(7)(i)(C) “[section] 60.5397a(c)(1), (2), and (7), and (c)(8)(i)” to “[section] 60.5397a(c)(1), (2), and (7), and (c)(8), or (d)” to correct an inadvertent cross-reference error.

The EPA also proposes to revise 40 CFR 60.5400(a) “requirements of §§ 60.482–1a(a), (b) and (d),” to “requirements of §§ 60.482–1a(a), (b), (d) and (e)”. This revision corrects an inadvertent omission of a citation to recordkeeping requirements that are included in the parallel provisions of NSPS OOOOa (see 40 CFR 60.5400a(a)).

Red line and strike-out versions of the corrected regulatory language for NSPS subparts OOOO and OOOOa are available in Docket ID No. EPA–HQ–OAR–2025–0163.

B. NSPS Subpart OOOOb Technical Corrections and Clarifications

1. Testing Range Requirement for Manufacturer’s Performance Test for Combustion Control Devices

The March 2024 Final Rule prescribes performance testing procedures for control devices. More specifically, 40 CFR 60.5413b(d) and 40 CFR 60.5413c(d) provide a procedure for the performance testing of a control device conducted by the device manufacturer, referred to as the “Manufacturers’ Performance Test” (MPT). While not specifically raised by the petitioners, in this proposed rule the EPA proposes an alternative option to clarify the four firing rate settings prescribed. These proposed changes impact NSPS OOOOb (40 CFR 60.5413b(d)(2)). See Section V.A.1 of this preamble for more information.

2. NHV Sampling

In the April 2026 Reconsideration Final Rule, the EPA expanded the scope of streams not subject to the March 2024

Final Rule’s NHV monitoring requirements to include all flares and ECDs at both new and existing sources.⁴³⁴ More specifically, the Agency prescribed that NHV continuous monitoring sampling and the alternative performance test (sampling demonstration) are required only where there are contributions from inert gases or other miscellaneous scenarios that decrease NHV content, and the EPA concluded that such scenarios can be validated and documented through the physical presence or absence of process equipment, process piping, engineering analysis, or process flow diagrams.^{435 436}

Since publishing the April 2026 Reconsideration Final Rule, the EPA has learned that some owners and operators interpret the NHV sampling provisions to require monitoring whenever any inert gas contribution or other scenario reduces NHV, even when the combined stream remains well above the applicable minimum NHV value. This reading of the regulatory text is not consistent with the EPA’s intent for the April 2026 Reconsideration Final Rule. Such an interpretation would essentially eliminate the monitoring exemptions for flares and ECDs finalized in the April 2026 Reconsideration Rule in situations where minor dilutions have no realistic potential to lower NHV below the required threshold. After reviewing this issue, including a request for confirmation submitted by GPA Midstream Association,⁴³⁷ the EPA agreed and determined that the regulatory text did not consistently convey the intended monitoring trigger.⁴³⁸ As a result, the Agency proposes to update and clarify the regulatory text, where applicable, to consistently indicate that the prescribed NHV sampling requirements are required only where there are contributions from inert gases or other miscellaneous scenarios that may lower the NHV of the combined stream below the applicable minimum NHV value, and not just when contributions from inert gases or other miscellaneous scenarios are simply introduced into the process. That is, where an owner or operator can document, using reasonable process knowledge or engineering analysis, that an added

stream does not have the potential to lower the combined inlet gas below the applicable minimum NHV value, the flare or ECD would thereby not be subject to the continuous NHV monitoring requirements in 40 CFR 60.5417b(d)(8)(ii) nor the alternative NHV monitoring sampling demonstration in 40 CFR 60.5417b(d)(8)(iii). The EPA notes that without this clarification, the current regulatory text could be interpreted to provide that any stream or scenario that lowers the NHV by any amount, even if the combined stream remains comfortably above the applicable minimum value, disqualifies a flare or ECD from the monitoring exemptions provided in the April 2026 Reconsideration Final Rule. The changes proposed herein would also be consistent with the preamble to the April 2026 Reconsideration Final Rule where the EPA stated its intent, in its updates to the qualifying NHV sampling requirements, that “it is the EPA’s understanding that operators have various means of making this determination on an operating history, best engineering judgement, or manufacturer’s recommendation basis as a response to known operating scenarios that could lower the NHV below the applicable minimum value.”⁴³⁹

Moreover, this proposal would also align with the EPA’s existing requirement that the NHV sampling be performed “at the highest [inert] percentage possible” at 40 CFR 60.5417b(d)(8)(iii)(F) and (G), 40 CFR 60.5420b(b)(11)(v)(I), and 40 CFR 60.5420b(c)(11)(vi). These proposed clarifications would be made to NSPS OOOOb at 40 CFR 60.5417b(d)(8)(ii), 40 CFR 60.5417b(d)(8)(iii)(F), and 40 CFR 60.5420b(c)(11)(vi).

3. CBI Email Address

The EPA proposes to update the CBI email address in NSPS subpart OOOOb at 40 CFR 60.5398b(d)(1) and 60.5413b(d)(12) to reflect a change of address to ocapcbi@epa.gov.

4. Electronic Reporting

In this proposal, the EPA is proposing minor updates to the semi-annual and annual compliance report spreadsheets for NSPS OOOOb sources submitted through the EPA’s Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). These updates pertain to the reporting requirements included in this

⁴³⁴ 91 FR 18056 (April 9, 2026).

⁴³⁵ 91 FR 18056 (April 9, 2026).

⁴³⁶ 91 FR 18077 (April 9, 2026).

⁴³⁷ GPA Midstream Association (GPA) (2026). Letter to EPA, et al. from GPA Midstream Association. Re: Docket ID No. EPA–HQ–OAR–2024–0358; Request for Confirmation Regarding Net Heating Value Monitoring and Reporting Requirements in 40 CFR part 60, subparts OOOOb/ c. June 23, 2026.

⁴³⁸ 91 FR 18082 (April 9, 2026).

⁴³⁹ *Id.*

proposal, as well as the finalized April 2026 Reconsideration Final Rule.⁴⁴⁰

A draft version of the proposed templates for these reports is included in the docket for this action. The EPA specifically requests comment on the

content, layout, and overall design of the template(s). (Question IV.1)

5. Cross-Reference, Paragraph Designation, and Typographical Technical Corrections

Table 28 (Cross-Reference, Paragraph Designation, and Typographical

Technical Corrections to 40 CFR part 60, subpart OOOOb) includes the sections and paragraphs of each identified error, the corrections proposed in this action, and the reasoning for the corrections.

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⁴⁴⁰ 91 FR 18056 (April 9, 2026).

Table 28. Cross-reference, Paragraph Designation, and Typographical Technical Corrections to 40 CFR Part 60, Subpart OOOOb

Section and Paragraph	Technical Correction and Reason for Change
60.5370b(a)(5)(i)	Revised “may comply with [section] 60.5390b(b)(1)” to “may comply with [section] 60.5390b(d)(1)” to correct an inadvertent cross-reference error.
60.5370b(c)	Deleted 40 CFR 60.5370b(c). This paragraph is included in 40 CFR 60.5360b(c).
60.5386b(a)	Revised “[section] 60.5380b(a)(3) through (6)” to “[section] 60.5380b(a)(4) through (7)” to correct inadvertent cross-reference errors.
60.5397b(d) introductory text	Revised 40 CFR 60.5397b(d) introductory text to reflect referencing to three paragraphs instead of two; “(d)(1) through (3)” instead of “(d)(1) and (2).” Revised 40 CFR 60.5397b(d)(2) by splitting into two paragraphs, 40 CFR 60.5397b(d)(2) and (3). This correction was made to be consistent with NSPS OOOOa.
60.5398b(b)(2)(vi)	Revised the last sentence of 40 CFR 60.5398b(b)(2)(vi) from “[t]he provisions of [section] 60.5397b(d)(3) do not apply” to “[t]he provisions of [section] 60.5397b(c)(3) do not apply” to correct an inadvertent cross-reference error.
60.5400b(h)(2)(ii)(A)	Changed period to a semi-colon to correct a typographical error so it reads as follows: “(A) Repack the existing valve with a low-e packing;”
60.5401b(a), (f), and (h); 60.5402b(b), (c), and (e); and 60.5415b(j)(1)	Revised “in gas/vapor service and in light liquid service” to “in gas/vapor service or in light liquid service” to be consistent with other references in NSPS OOOOb.
60.5401b(i)	Removed 40 CFR 60.5401b(i) section paragraph (second one) due to an inadvertent duplication of the section paragraph.
60.5403b(e)	Revised “[s]amples used in conjunction with paragraph (d) and (e) of this section” to “[s]amples used in conjunction with paragraph (d) of this section and [section] 60.5402b(d)” to clarify alternative heavy/light liquid service requirements.
60.5410b(c)(2)(i)	Revised “[section] 60.5377(g)” to “[section] 60.5377b(g)” to correct an inadvertent typographical error.
60.5410b(j)(10)	Revised the second sentence of the regulatory text from “complying with [section] 60.112b(d)(a)(1) or (2)” to “complying with [section] 60.112b(a)(1) or (2)” to correct an inadvertent typographical error.

60.5398b(d)(1) introductory text and 60.5413b(d)(12) introductory text	Updated CBI email address in the cited introductory section paragraphs in two places to reflect a change in the email address.
60.5415b(f)(3)	Removed 40 CFR 60.5415b(f)(3) section paragraph (first one) due to an inadvertent duplication of the section paragraph.
60.5415b(l)	Revised 40 CFR 60.5415b(l) introductory paragraph descriptor by deleting “[c]ontinuous compliance” and replace it with “[f]ugitive emissions components affected facility.” This change corrects an inadvertent error and is consistent with other descriptors in the section.
60.5420b(a)(4)	Revised paragraph so that “of (5) decimals of a degree” is clearly included as part of paragraph (a)(4). This change is a paragraph format change.
60.5420b(b)(2)(xv) and 60.5420b(c)(1)(vi)(A)	Revised “in order the make that claim, including” to “in order to make that claim, including.” This edit corrects an inadvertent typographical error.
60.5420b(b)(7)(i)	Revised “each process controller that is driven by natural gas, as required by [section] 60.5390b(d), that allows traceability” to “each process controller that is driven by natural gas that allows traceability” to remove an inadvertent incorrect cross-reference.
60.5420b(b)(8)(vii) second sentence	Revised “each storage vessel that that” to “each storage vessel that.” This edit corrects an inadvertent typographical error.
60.5420b(b)(8)(ix)	Revised last sentence from “information in (b)(8)(iii) through (vii) of this section” to “information in (b)(8)(iii) through (viii) of this section” to correct an inadvertent cross-reference error.
60.5420b(b)(9)(ii)(C)	Revised “[section] 60.5397b(c)(1), (2), and (7), (c)(8)(i), or (d)” to “[section] 60.5397b(c)(1), (2), and (7), (c)(8), or (d)” to correct an inadvertent cross-reference error.
60.5430b Process controller definition	“Process controller” definition order in list of definitions corrected to reflect alphabetical order to correct an inadvertent placement of the definition in the list of definitions.

BILLING CODE 6560–50–C**6. Clarifying Technical Corrections**

This action also proposes technical corrections to clarify erroneously

included language in the regulatory text (or in some cases, erroneously omitted). Table 29 (Clarifying Technical Corrections to 40 CFR part 60, subpart OOOOb) includes the sections and

paragraphs of each identified error, the corrections proposed by this action, and the reasoning for the corrections.

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Table 29. Clarifying Technical Corrections to 40 CFR Part 60, Subpart OOOOb

Section and Paragraph	Clarifying Technical Correction and Reason for Change
60.5370b(a)(1)	Revised to better clarify the compliance date for when an owner or operator is complying with the alternative requirement to replace reciprocating compressor rod packing every 8760 hours. Specifically, the EPA proposes to revise 40 CFR 60.5370b(a)(1) introductory text to add “or as an alternative, with the requirements in [section] 60.5385b(d),” and 40 CFR 60.5370v(a)(1)(ii) to delete “and (d)(3).”
60.5377b(b), (c), (f)(1), (f)(2), (g) introductory text, (g)(1), and (g)(3)	Revised “paragraph [or paragraphs] (a)(1) through (4) of this section” to “paragraph (a)(1), (2), (3), or (4) of this section” to distinguish that an owner or operator is required to comply with one and not all compliance options. These edits clarify conditional applicability.
60.5400b(a) introductory text	a. Revised the first sentence from “for each pump in light liquid service, pressure relief device in gas/vapor service, valve in gas/vapor or light liquid service, and connector in gas/vapor or light liquid service, as applicable” to “for each pump in light liquid service, each pressure relief device in gas/vapor service, each valve in gas/vapor or light liquid service, and each connector in gas/vapor or light liquid service, as applicable.” b. Revised the third sentence from “for each pump, valve, and connector in heavy liquid service and pressure relief device in light liquid or heavy liquid service” to “for each pump, each valve, and each connector in heavy liquid service and each pressure relief device in light liquid or heavy liquid service.” These corrections clarify that requirements apply to each component type in service, as applicable.
60.5401b(f)	Revised “each valve in gas/vapor and in light liquid service” to “each valve in gas/vapor and each valve in light liquid service” to clarify that requirements apply to each valve.
60.5410b(c)(1)	a. Revised “[section] 60.5377b(a),” to “[section] 60.5377b(a)(1), (2), (3), or (4),” and b. Revised “[section] 60.5420b(c)(3)(i), (ii), and (iv)” to “[section] 60.5420b(c)(3)(i), and (ii), as applicable, and submit the information required by [section] 60.5420b(b)(4)(i) through (v) in your initial annual report.” These edits correct an inadvertent cross-reference error, clarify conditional applicability, and are consistent with edits and parallel requirements in EG OOOOc.
60.5415b(d)(2)	Revised by splitting it up into three separate subparagraphs (i) through (iii) based on each compliance option type. This proposed change increases clarity without changing requirements and is consistent with 40 CFR 60.5415c(c)(1).
60.5415b(i)(3)	Revised to add “as applicable” in order to clarify conditional applicability. Specifically, changed “complying with paragraphs (i)(6), (7), (9), and (10) of this section” to “complying with paragraphs (i)(6), (7), (9), and (10) of this section, as applicable.”

60.5416b(b)(1)(i)	Revised to add “[e]xcept as specified in paragraph (b)(1)(ii) of this section,” to the beginning of the first sentence. The EPA included this addition to clarify exception from specified requirements for covers and CVSs located at onshore natural gas processing plants which are specified in 40 CFR 60.5416c(b)(1)(ii).
60.5420b(b)(9)(ii)(C)	Revised “[a]ny deviations from the monitoring plan elements under [section] 60.5397b(c)(1), (2), and (7), (c)(8)(i), or (d)” to “[a]ny deviations from the monitoring plan elements under [section] 60.5397b(c)(1), (2), and (7), (c)(8), or (d). This revision clarifies that monitoring plan elements include the elements specified in paragraphs (c)(8)(i) through (iv) and not just (c)(8)(i).
Table 2 to subpart OOOOb of Part 60— Alternative Technology Periodic Screening Frequency at Well Sites and Centralized Production Facilities Subject to AVO Inspections and/or Semiannual OGI or EPA Method 21 Monitoring	Added footnote that sources located on the Alaska North Slope normally subject to annual monitoring under 40 CFR 60.5397b(g)(1)(vi) must meet the periodic screening frequency of this table if they choose to demonstrate compliance using periodic screenings. This addition clarifies which periodic screening frequencies sources on the Alaska North Slope must meet.

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A red line and strike-out version of the corrected regulatory language for NSPS OOOOb is available in Docket ID No. EPA–HQ–OAR–2025–0163.

C. EG Subpart OOOOc Technical Corrections and Clarifications

1. Testing Range Requirement for Manufacturer’s Performance Test for Combustion Control Devices

The March 2024 Final Rule prescribes performance testing procedures for control devices. More specifically, 40 CFR 60.5413b(d) and 40 CFR 60.5413c(d) provide a procedure for the performance testing of a control device conducted by the device manufacturer, referred to as the “Manufacturers’ Performance Test” (MPT). While not specifically raised by the petitioners, in this proposed rule the EPA proposes an alternative option to clarify the four firing rate settings prescribed. These proposed changes impact EG OOOOc (40 CFR 60.5413c(d)(2)). See Section IV.A.1 of this preamble for more information.

2. NHV Sampling

In the April 2026 Reconsideration Final Rule, the EPA expanded the scope of streams not subject to the March 2024 Final Rule’s NHV monitoring

requirements to include all flares and ECDs at both new and existing sources. More specifically, the Agency prescribed that NHV continuous monitoring sampling and the alternative performance test (sampling demonstration) is required only where there are contributions from inert gases or other miscellaneous scenarios that decrease NHV content.

Since publishing the April 2026 Reconsideration Final Rule, the EPA has learned that some owners and operators interpret the NHV sampling provisions to require monitoring whenever any inert gas contribution or other scenario reduces NHV, even when the combined stream remains well above the applicable minimum NHV value. As a result, the Agency proposes to update and clarify the regulatory text, where applicable, to consistently indicate that the prescribed NHV sampling requirements are required only where there are contributions from inert gases or other miscellaneous scenarios that may lower the NHV of the combined stream below the applicable minimum NHV value, and not just when contributions from inert gases or other miscellaneous scenarios are simply introduced into the process.

Moreover, this would also align with the EPA’s existing requirement that the

NHV sampling be performed “at the highest [inert] percentage possible” at 40 CFR 60.5417c(d)(8)(iii)(F) and (G), 40 CFR 60.5420c(b)(10)(v)(I), and 40 CFR 60.5420c(c)(10)(vi). These proposed clarifications would be made to EG OOOOc at 40 CFR 60.5417c(d)(8)(ii), 40 CFR 60.5417c(d)(8)(iii), 40 CFR 60.5417c(d)(8)(iii)(F), 40 CFR 60.5417c(d)(8)(iii)(G), 40 CFR 60.5420c(b)(10)(v)(I), and 40 CFR 60.5420c(c)(10)(vi). See section IV.B.2 of this preamble for more information.

3. CBI Email Address

The EPA proposes to update the CBI email address in EG OOOOc at 40 CFR 60.5413c(d)(12) and 60.5420c(d)(1) to reflect a change of address to *ocapcbi@epa.gov*.

4. Electronic Reporting

In this proposal, the EPA is proposing minor updates to the semi-annual and annual compliance report spreadsheets for EG OOOOc sources submitted through the EPA’s CDX using the CEDRI. These updates pertain to the reporting requirements included in this proposal, as well as the finalized April 2026 Reconsideration Final Rule.⁴⁴¹

⁴⁴¹ 91 FR 18056 (April 9, 2026).

Table 30. Cross-reference, Paragraph Designation, and Typographical Technical Corrections to 40 CFR Part 60, Subpart OOOOc

Section and Paragraph	Technical Correction and Reason for Change
60.5396c(b)(1)(ii)	Revised 40 CFR 60.5396c(b)(1) by deleting 60.5396(b)(1)(ii) and renumbering subparagraphs. This correction of an inadvertent error provides consistency with NSPS OOOOb.
60.5397c(d)	Revised 40 CFR 60.5397c(d) introductory text to reflect referencing to three paragraphs instead of two; “(d)(1) through (3)” instead of “(d)(1) and (2).” Revised 40 CFR 60.5397c(d)(2) by splitting into two paragraphs, 40 CFR 60.5397b(d)(2) and (3). This correction provides consistency with NSPS OOOOa.
60.5398c(b)(2)(vi)	Revised the last sentence of 40 CFR 60.5398b(b)(2)(vi) from “[t]he provisions of [section] 60.5397c(d)(3) do not apply” to “[t]he provisions of [section] 60.5397c(c)(3) do not apply” to correct an inadvertent cross-reference error.
60.5398c(b)(5)(v), first sentence	Revised the first sentence from “in accordance with § 60.5416c(b)(4), except” to “in accordance with § 60.5416c(b)(5), except” to correct an inadvertent cross-reference error.
60.5401c(a) (seventh sentence), (f) introductory text, (h) introductory text, and (h)(1); 60.5402c(b) introductory text, (c), and (e).	Revised “in gas/vapor service and in light liquid service” or “in gas/vapor and light liquid service” to “in gas/vapor service or in light liquid service” to be consistent with other references in EG OOOOc.
60.5405c(a) introductory text	Revised 40 CFR 60.5405c(a) introductory text to make the following cross-reference corrections: a. Replaced “[section] 60.5393c(b)(1)(iii), (b)(2)(i), or (c)(2)(iv) with “[section] 60.5393c(a) or (b)” to correct an inadvertent cross-reference error; and b. Replaced “[section] 60.5392c(a)(2)(i)(A)” with “[section] 60.5392c(a)(1) or (2)” to correct an inadvertent cross reference error.
60.5410c(h)(4)	Revised “within 180 days after initial startup, or within 180 days 36 months after the [S]tate plan submittal deadline” to “within 180 days after initial startup, or within 36 months after the State plan submittal deadline.” This corrects an inadvertent typographical error by removing the second “180 days.”
60.5410c(h)(10)	Revised “You must submit a statement that you are complying with [section] 60.112b(d)(a)(1) or (2)” to “You must submit a statement that you are complying with [section] 60.112b(a)(1) or (2).” This corrects and inadvertent typographical error by removing “(d).”
60.5412c(a) introductory text	Revised 40 CFR 60.5412c(a) introductory text from “[a]s an alternative to paragraphs (a)(1) through (3) of this section, you may install a control device” to “[a]s an alternative to paragraph (a)(1) of this section, you may

	install a combustion control device.” These revisions fix inadvertent errors and are consistent with NSPS OOOOb.
60.5413c(d)(12) introductory text and 60.5420c(d)(1)	Updated CBI office name and email address in 40 CFR (d)(12) introductory text and in 40 CFR 60.5420c(d)(1) to reflect revised email address.
60.5415c(j) introductory descriptor	Revised descriptor by deleting “[c]ontinuous compliance” and replace it with “[f]ugitive emissions components designated facility.” This change corrects an inadvertent error and is consistent with other descriptors in the section.
60.5430c Acid gas definition	“Acid gas” definition removed from definitions. Sweetening units are not covered under EG OOOOc. This removes a definition that is not needed in EG OOOOc.
60.5430c Process controller definition	“Process controller” definition order in list of definitions corrected to reflect alphabetical order to correct an inadvertent placement of the definition in the list of definitions.
60.5430c Total Reduced Sulfur definition	“Total reduced sulfur” definition removed from definitions. Sweetening units are not covered under EG OOOOc. This removes a definition that is not needed in EG OOOOc.
60.5430c Total SO ₂ equivalents	“Total SO ₂ equivalents” definition removed from definitions. Sweetening units are not covered under EG OOOOc. This removes a definition that is not needed in EG OOOOc.

BILLING CODE 6560–50–C**6. Clarifying Technical Corrections**

This action also proposes technical corrections to clarify erroneously

included language in the regulatory text (or in some cases, erroneously omitted). Table 31 (Clarifying Technical Corrections to 40 CFR part 60, subpart OOOOc) includes the sections and

paragraphs of each identified error, the corrections proposed by this action, and the reasoning for the corrections.

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Table 31. Clarifying Technical Corrections to 40 CFR Part 60, Subpart OOOOc

Section and Paragraph	Clarifying Technical Correction and Reason for Change
60.5363c(a)(1) and (2)	Revised to clarify in both paragraphs (a)(1) and (2) that, for purposes of the inventory of designated facilities and emissions from designated facilities in a State, the prescriptive requirements of 40 CFR 60.25a(a) do not apply. Specific revisions change the regulatory text of paragraphs (a)(1) and (2) from “subpart, [section] 60.25a(a) does not apply” to “subpart, the emissions inventory requirements of [section] 60.25a(a) do not apply.” These changes are consistent with the EPA's intent as specified in the March 2024 Final Rule Preamble. ⁴⁴¹
60.5400c(a) introductory text	a. Revised the first sentence from “or each pump in light liquid service, pressure relief device in gas/vapor service, valve in gas/vapor or light liquid service, and connector in gas/vapor or light liquid service, as applicable” to “or each pump in light liquid service, each pressure relief device in gas/vapor service, each valve in gas/vapor or light liquid service, and each connector in gas/vapor or light liquid service, as applicable.” b. Revised the fourth sentence from “for each pump, valve, and connector in heavy liquid service and pressure relief device in light liquid or heavy liquid service” to “for each pump, each valve, and each connector in heavy liquid service and each pressure relief device in light liquid or in heavy liquid service.” These corrections clarify that requirements apply to each component type in service, as applicable.
60.5401c(a) introductory text	Revised 40 CFR 60.5401c(a) introductory text (sixth sentence) from “for each pump, valve, and connector in heavy liquid service and pressure relief device in light liquid or heavy liquid service” to “for each pump, each valve, and each connector in heavy liquid service and each pressure relief device in light liquid or in heavy liquid service.” These corrections clarify that requirements apply to each component type in service, as applicable.
60.5401c(f)	Revised “each valve in gas/vapor and in light liquid service” to “each valve in gas/vapor and each valve in light liquid service” to clarify that requirements apply to each valve.
60.5415c(i)(1) introductory text	Revised 40 CFR 60.5415c(i)(1) introductory text from “each pump in light liquid service, pressure relief device in gas/vapor service, valve in gas/vapor and light liquid service and connector in gas/vapor and light liquid service as required by § 60.5400c(b)” to “each pump in light liquid service, each pressure relief device in gas/vapor service, each valve in gas/vapor or in light liquid service and each connector in gas/vapor or in light liquid service as required by § 60.5400c(b).” These changes clarify that each component in service, as applicable, are required to conduct monitoring.
60.5415c(i)(8)	Revised 40 CFR 60.5415c(i)(8) from “for each valve in gas/vapor or light liquid service” to “for each valve in gas/vapor and each valve in light liquid service.” These changes clarify that an owner or

Section and Paragraph	Clarifying Technical Correction and Reason for Change
	operator much conduct monitoring of each valve in both gas/vapor and light liquid service.
60.5415c(i)(9)	Revised 40 CFR 60.5415c(i)(9) from “each pump, valve, and connector in heavy liquid service and each pressure relief device in light liquid or heavy liquid service” to “each pump, each valve, and each connector in heavy liquid service and each pressure relief device in light liquid service or each pressure relief device in heavy liquid service.” These changes clarify that an owner or operator must conduct monitoring of each component in service, as applicable.
60.5415c(i)(10)	Revised 40 CFR 60.5415c(i)(10) from “each connector in gas/vapor or light liquid service” to “each connector in gas/vapor service or each connector in light liquid service.” These changes clarify that an owner or operator must conduct monitoring of each connector in gas/vapor and light liquid service.
60.5416c(a) introductory text	Revised 40 CFR 60.5416c(a) introductory text from “each cover according to the procedures” to “each cover, as applicable, according to the procedures” to clarify and acknowledge that not all sources have covers.
60.5416c(b)(1)(i)	Revised 40 CFR 60.5416c(b)(1)(i) to add “[e]xcept as specified in paragraph (b)(1)(ii) of this section,” to the beginning of the first sentence. This addition clarifies exception from specified requirements for covers and CVSs located at onshore natural gas processing plants which are specified in 40 CFR 60.5416c(b)(1)(ii).
Table 3 to subpart OOOOc of Part 60— Alternative Technology Periodic Screening Frequency at Well Sites and Centralized Production Facilities Subject to AVO Inspections and/or Semiannual OGI or EPA Method 21 Monitoring	Added footnote that sources located on the Alaska North Slope normally subject to annual monitoring under 40 CFR 60.5397c(g)(1)(vi) must meet the periodic screening frequency of this table if they choose to demonstrate compliance using periodic screenings. This addition clarifies which periodic screening frequencies sources on the Alaska North Slope must meet.

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A red line and strike-out version of the corrected regulatory language for EG OOOOc is available in Docket ID No. EPA–HQ–OAR–2025–0163.

V. Appendix K**A. Summary of Provisions Promulgated in March 2024 Final Rule**

In the March 2024 Final Rule, the EPA finalized 40 CFR part 60, Appendix K as the monitoring survey requirement to monitor for leaks using OGI at

onshore natural gas processing plants subject to NSPS OOOOb. The EPA also included Appendix K in the model rule (presumptive standards) in EG OOOOc for the same purpose. Appendix K, which is the protocol used to determine whether a source has a VOC and/or GHG leak using OGI, was also finalized as part of the March 2024 Final Rule. Put another way, in the March 2024 Final Rule, the EPA promulgated a new appendix to part 60 (Appendix K), which the Agency then allowed to be

used in a new NSPS that the Agency promulgated at the same time (NSPS OOOOb). However, the appendix is broader than just NSPS OOOOb and could be used for other subparts in 40 CFR part 60, as appropriate. The Appendix K protocol covers surveys of process equipment using OGI cameras in sectors where the majority of constituents (>75 percent by volume) in the emissions streams have a response factor (as defined in Appendix K, section 3.0) of at least 0.25, when

compared to the response factor of propane, and can be imaged by the equipment specified in section 6.0 of Appendix K.⁴⁴³

B. Petitioners' Concerns and Supporting Information, Summary of Proposed Changes, and Basis for Proposed Changes

Petitioners' Concerns and Supporting Information. Reconsideration petitioners requested that the EPA allow existing gas processing plants (*i.e.*, gas plants that are currently subject to either NSPS OOOO, OOOOa, or KKK) to utilize OGI with Appendix K in lieu of EPA Method 21 monitoring.⁴⁴⁴ Currently, NSPS OOOO and OOOOa sources must follow the EPA Method 21 procedures specified by NSPS VVa in 40 CFR 60.485a, and NSPS KKK sources must follow the EPA Method 21 procedures specified by NSPS VV in 40 CFR 60.485. The reconsideration petitioners claim that the March 2024 Final Rule allows for States to incorporate this compliance option into their State plans under EG OOOOc. However, they asserted that operators should be allowed to use this compliance option now, prior to full implementation of EG OOOOc via either a State or federal plan. Moreover, in their view, the EPA has demonstrated that OGI with Appendix K is an acceptable alternative to traditional EPA Method 21 monitoring and there should not be a time delay on when operators can start implementing such programs.⁴⁴⁵

Petitioners also claimed that because the applicability of NSPS is on a process unit basis, gas processing plants often have some units subject to NSPS KKK, OOOO, or OOOOa and other units subject to OOOOb, which allows the use of Appendix K, OGI, or EPA Method 21, creating inconsistent compliance options and confusion within a given oil and natural gas facility.

Petitioners argued that OGI with Appendix K is a viable option for certain operators, reducing personnel time spent on complying with LDAR inspection requirements and removing the obligation to tag and maintain an inventory of all components at a facility. Petitioners asserted that, due to the demonstrated equivalency of the two

methods (*i.e.*, OGI and EPA Method 21), there should be no delay in allowing OGI with Appendix K to be implemented at existing facilities subject to NSPS OOOO, OOOOa, and KKK.

Summary of Proposed Changes. In the March 2024 Final Rule, the EPA limited the Appendix K "advanced technology" option as a novel approach to the rules they were actively promulgating (*i.e.*, NSPS OOOOb and EG OOOOc), and did not reopen NSPS OOOO, OOOOa, or KKK in that action.⁴⁴⁶ In this reconsideration proposal, the EPA proposes regulatory revisions to provide the option for owners and operators to perform OGI surveys conducted according to Appendix K for NSPS OOOO, OOOOa, and KKK gas processing facilities. Under this proposal, consistent with the provisions in NSPS OOOOb and the model rule in EG OOOOc for gas processing facilities, if the "Appendix K option" is chosen, facilities would need to monitor for equipment leaks using OGI in accordance with Appendix K, at a bimonthly survey frequency, with any emissions observed using OGI defined as a leak. These proposed changes would be made to NSPS OOOO (40 CFR 60.5401 and 60.5421), NSPS OOOOa (40 CFR 60.5401a and 60.5421a), and NSPS KKK (40 CFR 60.632 and 60.635), consistent with the provisions already included in NSPS OOOOb (40 CFR 60.5400b and 60.5421b) and EG OOOOc (40 CFR 60.5400c and 60.5421c).

Basis for Proposed Changes. These proposed revisions provide additional flexibility for the regulated community by expanding the option to use OGI surveys conducted according to Appendix K for all eligible facilities. The EPA further notes that operators could currently seek approval to use Appendix K on an operator-by-operator basis through the CAA section 111(h)(3) Alternative Means of Emission Limitation (AMEL) process, but if multiple requests for the same technology occur, using the AMEL process would be less efficient and more burdensome as opposed to adding the Appendix K option NSPS OOOO, NSPS OOOOa, and NSPS KKK, as described earlier, for both the regulated community and the EPA.

Moreover, the EPA found in the March 2024 Final Rule that bimonthly OGI conducted according to the procedures in Appendix K provides equivalent or greater emissions reduction in comparison to EPA Method

21 conducted according to NSPS VV and VVa (which is required under NSPS OOOO, OOOOa, and KKK) for gas processing plants.⁴⁴⁷ Based on this information included in the March 2024 Final Rule record, the EPA proposes to find that allowing owners and operators the option to use Appendix K instead of EPA Method 21 will result in equivalent or better emissions reductions. As such, the EPA proposes that Appendix K is an appropriate alternative to allow in these scenarios.

As stated in the preamble to the March 2024 Final Rule, the EPA also intends for the Appendix K protocol to have broad applicability, where Appendix K would have applicability to facilities when specified in a referencing subpart of 40 CFR part 60 to help determine the presence and location of leaks (but is not applicable for use in direct emission rate measurements from sources). That is, the Appendix K protocol does not on its own apply to any sources; it applies only where a specific rule subpart adopts it by reference and specifies the sources to which it applies. In this case, the EPA proposes to expand the use of the Appendix K protocol implementing the standards for process units at existing natural gas processing plants subject to NSPS KKK, OOOO, and OOOOa.

If the EPA finalizes this proposal, once incorporated into subparts KKK, OOOO, and OOOOa, the limitations and requirements that currently apply to Appendix K would also apply to its use for purposes of these subparts. For example, as described in the March 2024 Final Rule, the protocol would only be applicable for surveys of process equipment using OGI cameras where the majority of compounds (>75 percent by volume) in the emissions streams have a response factor of at least 0.25 when compared to the response factor of propane. Additionally, the OGI camera used for surveying must also be capable of detecting (or producing a detectable image of) methane emissions of 19 grams per hour (g/hr) and either butane emissions of 29 g/hr or propane emissions of 22 g/hr at a viewing distance of 2.0 meters and a delta-T of 5.0 °C in an environment of calm wind conditions around 1.0 meter per second or less. Verification that the OGI camera meets these criteria may be performed by the owner or operator, the camera manufacturer, or a third party.⁴⁴⁸ Additional requirements would also apply, as described in the March 2024

⁴⁴³ For more information on what the EPA finalized in the March 2024 Final Rule on this topic, see 89 FR at 16827 and 17013–17016.

⁴⁴⁴ GPA Midstream Association (GPA) (2025). Letter to Jodi Howard, US Environmental Protection Agency, from GPA Midstream Association. Re: Reconsideration of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review. July 24, 2025.

⁴⁴⁵ 89 FR 17013–14 (March 8, 2024).

⁴⁴⁶ The Appendix K protocol may be applied to other sources only when incorporated through rulemaking to a specific subpart.

⁴⁴⁷ 89 FR 17013–14 (March 8, 2024).

⁴⁴⁸ *Id.*

Final Rule.⁴⁴⁹ However, the EPA notes that no changes to the Appendix K procedures are being proposed in this action.

VI. Summary of Cost, Environmental, and Economic Impacts

In accordance with the requirements of Executive Order 12866, the EPA assessed the costs, environmental, and economic impacts associated with this proposed rulemaking. These results are presented in detail in the RIA accompanying this proposed rulemaking. This analysis is entirely distinct from the statutory BSER considerations proposed herein and is presented solely for the purposes of complying with Executive Order 12866.

The EPA estimated present values (PV) and equivalent annualized values (EAV) of the estimated increase in economic surplus of this proposed reconsideration and co-proposal in 2024 dollars over the 2027 to 2050 period, discounted to 2025.⁴⁵⁰ Estimated increases in economic surplus include reductions in compliance cost expenditures from industry, as well as increased value to consumers from lower commodity prices and revenues to industry from increased production. Surplus changes also account for the forgone value of natural gas captured as a result of less stringent compliance obligations. Changes beyond compliance cost savings are represented by the Savings from Energy Market Impacts values. The aspect of the

proposed reconsideration reflected in the quantitative analysis are the subcategorization and standard setting for marginal well sites and removal of route to sales as the BSER for associated gas. The aspects of the co-proposal reflected in the quantitative analysis are the subcategorization and standard setting of conventional well sites and removal of route to sales as the BSER for associated gas.

Table 32 presents the estimated additional economic surplus of this proposed reconsideration and co-proposal in 2024 dollars for the baseline which includes the March 2024 Final Rule (*i.e.*, the primary baseline analyzed in the RIA). This table presents the PV and EAV of these estimates discounted at three percent and seven percent.

Table 32. Present Value and Equivalent Annualized Value of Increased Economic Surplus Estimates of the Proposed Action, Discounted to 2025 (Millions of 2024 Dollars), 2027-2025^a

		3 Percent Discount Rate		7 Percent Discount Rate	
		PV	EAV	PV	EAV
Proposed Reconsideration	Compliance Cost Savings ^b	\$42,000	\$2,500	\$29,000	\$2,500
	Savings from Energy Market Impacts	\$3,000	\$200	\$3,000	\$300
	Net Surplus	\$45,000	\$2,700	\$32,000	\$2,800
Co-Proposal	Compliance Cost Savings ^b	\$39,000	\$2,300	\$27,000	\$2,300
	Savings from Energy Market Impacts	\$370	\$22	\$1,000	\$100
	Net Surplus	\$39,000	\$2,300	\$28,000	\$2,400

^a Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.

^b The Compliance Cost Savings rows include the change in value of product recovery.

Table 33 summarizes the emissions changes associated with the proposed reconsideration and co-proposal over the 2027 to 2050 period. Emissions changes are presented for three

categories: methane, VOC, and HAP. As is further explained in sections 5.2 and 7.4 of the RIA, there are a number of parts of EPA’s analysis of the RIA that may have resulted in overestimation of

foregone emission reductions. The limitations noted in section 5.2 also existed in the 2024 RIA thus creating a similar potential that those emission reductions were overestimated.

⁴⁴⁹ *Id.*
⁴⁵⁰ The EPA has used economic surplus metrics in previous rulemakings; for example, *see* Section VII.A of “National Emission Standards for

Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants,” 75 FR 54970 (September 9, 2010). While not as commonly used as social cost metrics derived from engineering

cost approaches, surplus metrics are often preferred because they attempt to account for aspects of market behavior that engineering cost approaches ignore.

Table 33. Total Projected Emissions Changes under the Proposed Additional Reconsideration Option, 2027-2050^a

	Emissions Changes		
	Methane (million short tons)	VOC (million short tons)	HAP (million short tons)
Proposed Reconsideration	60	17	2.3
Co-Proposal	88	25	3.3

^a Numbers rounded to two significant digits unless otherwise noted. Values represent the increase in emissions over the baseline. To convert from short tons to metric tons, multiply the short tons by 0.907. Alternatively, to convert metric tons to short tons, multiply metric tons by 1.102.

The EPA requests comment on the modeling assumptions, data inputs, and methodological choices used in the accompanying RIA, including assumptions around site equipment assignment, annual operating costs, and production decline rates. (Question VII.1)

VII. Request for Comments

The EPA seeks to solicit comments on this proposed action. In addition to general comments on this proposed action, the EPA solicits comment and responses to specific questions related to the proposed changes. For convenience, the EPA provides a summary of these questions in table 34. In addition to the specific questions below, the EPA solicits comments on other changes to the March 2024 Final

Rule that could further unleash U.S. energy dominance by increasing the amount of oil and gas that can be produced consistent with the best reading of applicable statutory requirements. The EPA is broadly seeking comment on any and all of the requirements established in the March 2024 Final Rule not discussed elsewhere in today's proposed rulemaking. More specifically, the EPA is interested in comments regarding any or all changes (whether by amendment or repeal) that could be made to the March 2024 Final Rule that would relieve unnecessary regulatory burden or remedy inconsistencies with the best reading of the Clean Air Act. As part of this broader comment solicitation, the EPA is focused on potential changes to: (1) BSER determinations for individual

affected or designated facilities that the EPA has not otherwise requested comment on; (2) the underlying standards of performance, emission guidelines, or other related requirements (*e.g.*, monitoring and recordkeeping) for those facilities; and (3) any other issues or concerns that may more broadly impact key assumptions that underlie multiple BSERs, standards of performance, or the emission guidelines established in the March 2024 Final Rule. Commenters are encouraged to provide information and data in support of any comments received. In response to information and data received, the final rule may revise, expand, or eliminate the standards or requirements in the March 2024 Final Rule.

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Table 34.- List of Questions

Question Number	Question
I.1	The EPA solicits comments on its proposed regulatory changes. Within this preamble, the EPA is also soliciting broader comment on further issues relative to the March 2024 Final Rule and resulting NSPS OOOOb and EG OOOOc, including both the additional issues raised by reconsideration petitioners for which the EPA is not proposing regulatory changes at this time and any additional issues commenters believe are relevant to the lawfulness, reasonableness, or implementability of the March 2024 Final Rule.
III.1a	The EPA seeks comment providing additional studies and information bearing on super-emitter events and corresponding strategies to address them, including whether the EPA should treat them separately as a regulatory manner in the first instance and, if so, whether and which threshold the EPA should use to separately consider such events
III.2a	Liquids Unloading: the EPA proposes that the NSPS OOOOb and EG OOOOc continue to require that owners and operators maintain records of the identification of each well (i.e., U.S. Well ID or U.S. Well ID associated with the well affected facility) that conducts a gas well liquids unloading operation during the reporting period without venting of methane and/or VOC emissions and the non-venting gas well liquids unloading method used. These records, which EPA understands would already be retained as part of normal site operations records/documentation, do not constitute a burdensome requirement. The EPA solicits comment on this proposal.
III.2b	Liquids Unloading: The EPA is also soliciting comment on repealing part or all of the recordkeeping and reporting requirements for liquids unloading in OOOOb, and the corresponding presumptive requirements in EG OOOOc and EG OOOOc. The Agency's ICR associated with the 2024 Final Rule anticipated that the recordkeeping and reporting burdens associated with liquids unloading would increase significantly over the first three years of implementation. The EPA seeks comment on whether those projected costs have materialized, and if so, which provisions are the most burdensome. (Question III.2b)
III.3a	Process Controllers: The EPA proposes intermittent controller requirements with quarterly OGI monitoring for process controllers on high pressure systems at compressor stations for modified and reconstructed facilities under NSPS OOOOb and for the presumptive standards in the EG OOOOc model rule. The EPA solicits comment on this proposal.
III.3b	Process Controllers: The EPA is proposing a different standard only for existing sources that would be required to retrofit equipment to comply with the NSPS OOOOb standards (i.e., modified and reconstructed facilities) and the EG OOOOc presumptive standards, but is not proposing an alternative or different standard for newly constructed facilities (i.e., for sources subject to NSPS OOOOb that were not previously existing sources that then modified or reconstructed). The EPA is soliciting comment on this aspect of the proposal, including whether additional or alternative standards or subcategories for sources subject to NSPS OOOOb are merited and whether the EPA's premise regarding cost equivalency in the design and initial planning phases is accurate.
III.3c	Process Controllers: The EPA is soliciting comment on the actuation pressure which best categorizes these high-pressure systems and whether additional subcategories are merited. Industry representatives have suggested using 100 psig as a general guideline for the level of pressure at which different types of process controllers, and actuators in particular, become more costly than the equipment needed for lower pressure levels. However, the EPA is interested in any information that may suggest that another or additional pressure levels would be better suited to delineate the subcategory or further subcategories.

III.3d	Process Controllers: The EPA is soliciting additional information on the relative change in emissions when process controller replacement events occur and the frequency with which they occur. The EPA also requests comment on whether the existing modification determination language appropriately captures changes in emissions increases, or whether adjustments to the current criteria are needed to reflect industry practices, such as clarifying what constitutes net increases in emissions from the source.
III.3e	Process Controllers: The EPA solicits comment on whether it would be appropriate to consider broader flexibility for process controllers. The EPA asks for additional information and data related to cost and technical feasibility of retrofits, routing to new or existing control devices, and challenges related to electricity access. The EPA also requests comment on recordkeeping, retention, and reporting requirements related to process controllers and . whether it is appropriate to repeal the zero emission standard for process controllers under NSPS OOOOb and EG OOOOc.
III.4a	Fugitive Emissions: The EPA proposes to amend 40 CFR 60.5397b(g)(2) and (3) and 40 CFR 60.5397c(g)(2) and (3) to include difficult- and unsafe-to-monitor provisions for AVO inspections that parallel those in the current rules for monitoring with EPA Method 21. The EPA solicits comment on this proposal.
III.4b	For purposes of setting fugitive emissions monitoring requirements, the EPA seeks comment (including data and detailed information) on how often fugitive emissions are found at different types of sites, the approximate volume of gas emitted during a typical fugitive emissions event at each type of site, estimates regarding the approximate length of time that fugitive events last at these sites, and the cost of conducting fugitive emissions monitoring (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs).
III.4c	The EPA is soliciting comment on the cost effectiveness and cost reasonableness of monitoring requirements for fugitive emissions generally. The EPA is specifically requesting information on the appropriate frequency, type of monitoring technology, equivalent monitoring technologies for various equipment types, and other relevant information that may improve EPA's cost effectiveness and cost reasonableness analyses, allowing the EPA to better target of emission reductions and EPA also seeks comment whether the fugitive emissions monitoring requirements in the March 2024 Final Rule are necessary considering this information. The EPA also seeks comment on whether further distinctions or subcategorizations may be needed to appropriately target meaningful emissions reductions in a cost reasonable manner, including potential exemptions of certain subcategories.
III.4d	Fugitive Emissions: This proposal does not include revisions to add references to NSPS OOOO, NSPS OOOOa or NSPS OOOOb in 40 CFR 60.5430c. The EPA solicits comment on this proposal.
III.4e	Fugitive Emissions: Modification criteria for centralized production facility proposal. The EPA proposes to amend the definitions of "well site" and "centralized production facility" to clarify the difference between a well site and a centralized production facility with respect to the receipt of liquids from one or more offsite natural gas or oil production wells. The EPA also proposes to amend the modification criteria in 40 CFR 60.5365b(i)(2) to describe the activities that would be classified as a modification at a centralized production facility for purposes of 40 CFR 60.5397b and 60.5398b. The EPA solicits comment on this proposal.
III.4f	Fugitive Emissions: The EPA proposes to amend the well closure provisions at 40 CFR 60.5397b(l)(2) and 60.5397c(l)(2), and 40 CFR 60.5420b(a)(4)(ii) and 60.5420c(a)(3)(ii) to allow facilities the option to submit a notification after the well closure is complete. The EPA solicits comment on this proposal.

III.5a	While the EPA is not proposing any specific changes related to the application of LPE limit criteria in this action, the EPA is soliciting comment from stakeholders and the public on this specific issue. Depending on the comments the Agency receives, the EPA may take further action at an appropriate time, and related, solicits further comment on whether the 2024 LPE criteria should be repealed.
III.5b	Storage Vessels: The EPA proposes to amend the modification provisions at 40 CFR 60.5365b(e)(3)(ii)(C), to delete the reference to centralized production facilities. The EPA also proposes to amend 40 CFR 60.5365b(e)(3)(ii)(D) to treat centralized production facilities the same as compressor stations and onshore natural gas processing plants for the purposes of determining if a modification has occurred. The EPA also proposes to amend 40 CFR 60.5365b(e)(2)(ii) to delete the reference to centralized production facilities, and to amend 40 CFR 60.5365b(e)(2)(iii) to add the reference to centralized production facilities. The EPA proposes similar edits in EG OOOOc at 40 CFR 60.5386c(e)(2)(ii) and (iii). The EPA solicits comment on these proposed changes.
III.5c	Storage Vessels: The EPA solicits comment on whether revising the LPE limit criteria in NSPS OOOOb and EG OOOOc to match the language used in NSPS OOOO and NSPS OOOOa would lead to unmitigated emissions increases and/or loopholes.
III.5d	Storage Vessels: The EPA solicits comment on whether maintaining the LPE limit criteria included in the March 2024 Final Rule but clarifying that a VOC emissions limit may serve as a surrogate for methane emissions where VOC and methane are present in the emissions stream would lead to unmitigated emissions increases and/or loopholes.
III.5e	Storage Vessels: The EPA solicits comment on whether revising the calculation required for the PTE to be a 12-month rolling average to be more consistent with air permitting standards, such as title V would lead to unmitigated emissions increases and/or loopholes.
III.5f	Storage Vessels: The EPA solicits comment on whether removing reporting requirement in 40 CFR 60.5365b(e)(2)(i)(F), but continue to require owners and operators to maintain records and make them available upon request would lead to unmitigated emissions increases and/or loopholes.
III.5g	Storage Vessels: The EPA solicits comment on whether removing the requirement in 40 CFR 60.5365b(e)(2)(i)(C) for performance testing to establish parametric limits and the associated requirements in 40 CFR 60.5365b(e)(2)(i)(D) to do continuous compliance monitoring of those parametric limits would lead to unmitigated emissions increases and/or loopholes.
III.5h	Storage Vessels: The EPA solicits comment on whether maintaining the LPE limit criteria included in the March 2024 Final Rule but clarifying that operators may use an LPE production limit that accounts for annual production decline in combination with an operational limit would lead to unmitigated emissions increases and/or loopholes.
III.5i	Storage Vessels: The EPA is also requesting comments on the real world impact of the current LPE requirements on storage vessel applicability determinations, including information: on (1) the number of storage vessels that could become subject to NSPS OOOOb or EG OOOOc solely because existing state permits or regulatory requirements do not include all six elements of the current LPE limit definition despite these vessels having actual emissions below the applicable VOC or methane thresholds; (2) the cost to operators and state agencies of revising existing permits and regulations to meet the current six element criteria; (3) whether existing state permitting programs achieve equivalent environmental outcomes to the federal LPE criteria without the specific elements at issue; (4) the timeline required for states to amend their permitting and regulatory programs to incorporate the current LPE limit criteria; and (5) finally, whether in light of these considerations, the LPE criteria under the 2024 Final Rule should be repealed.

III.5j	Storage Vessels: The EPA solicits comment on information regarding explosions of a NSPS OOOOb storage vessel affected facility as well as any near misses.
III.5k	Storage Vessels: The EPA solicits comment on whether an owner or operator of a storage vessel affected facility should be exempt from operating a control device when a shut-in occurs and whether there are additional work practices that could be put in place to minimize emissions during these events
III.5l	Storage Vessels: The EPA solicits comment on the change in emission profile of a storage vessel affected facility after a shut-in and whether the shut-in emission profile is under 6 tpy of VOC or 20 tpy of methane.
III.5m	Storage Vessels: The EPA solicits comment on whether sites subject to a temporary shut-in could recalculate their PTE to determine the need for storage vessel control.
III.5n	Storage Vessels: The EPA solicits comment on whether sites subject to a temporary shut-in could be subject to an alternative standard (tons per day of VOC/tons per day of methane) to determine the need for storage vessel control.
III.6a	Covers and Closed Vent Systems: The EPA proposes that covers and CVSs on well, centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, and process unit equipment affected facilities used to comply with the requirements to route to a process or to control, as applicable, should be monitored for emissions and defects and those emissions and defects related normal wear and tear be repaired upon identification or within a short timeline (within 24 hours). The EPA solicits comment on the 24-hour timeline, acknowledging that 24 hours may be sufficient for some companies to make routine maintenance fixes such as tightening, cleaning, or lubricating equipment, this timeline might pose challenges for other companies. The EPA requests comment on all aspects this proposed timeline, including suggested alternative timelines and supporting rationales.
III.6b	Covers and Closed Vent Systems: The EPA is soliciting comment on all aspects of the proposed changes to the CVS requirements. The EPA is taking comment on whether these changes fully address concerns raised by petitioners regarding the CVS monitoring and repair requirements not recognizing the unique challenges the oil and gas industry, specifically, because of the fact that facilities have many remote sites where rapid repair may be significantly more challenging than facilities such as refineries or chemical plants that are staffed twenty four hours a day.
III.6c	Petitioners expressed concerns that the current NIE requirements create perverse incentives that discourage the use of advanced detection technologies or proactive voluntary monitoring. The Agency is also taking comment on the impacts that these proposed provisions may have on willingness to use alternative monitoring approaches.
III.6d	Covers and Closed Vent Systems: The EPA is soliciting comment on petitioners' suggestion that the NIE standard for CVSs should be replaced with an LDAR work practice approach more consistent with the framework applied to fugitive emissions components. EPA takes comment on petitioners' arguments that in many cases the components of a CVS (valves, pipes and connectors etc.) are identical to the components covered by the fugitive program.
III.6e	Covers and Closed Vent Systems: The EPA is soliciting comment on what specifically such an approach (similar to the LDAR work practice standard) might entail. In particular, the Agency is soliciting comment on whether an LDAR approach could be designed with additional safeguards to account for the fact that unlike other components of the existing LDAR program, CVS are integral to the ability to control any emissions that have been captured and are being routed to the control device through the CVS.
III.6f	Covers and Closed Vent Systems: The EPA is soliciting comment on the extent to which an inadequate or undersized tank design is the underlying

	cause of emissions from CVS on storage vessels and whether the proposed NIE requirements address the challenges the industry faces.
III.6g	Covers and Closed Vent Systems: The EPA is soliciting comment on whether there are better systematic approaches to identifying under-designed CVS than a requirement to operate CVS with NIE? The Agency is considering whether an inability to repair within 24 hours is an appropriate way to identify systems with design flaws, and what the appropriate criteria and requirements are to address chronic leakers under an NIE or another approach.
III.7a	Control Devices: Continuous burning pilot flame: The EPA solicits comment on the reliability, efficacy, and overall performance of automatic igniter pilot technology to ascertain if the devices perform comparably to continuously lit pilot flames. Moreover, the EPA solicits comment on the number of sites that have to use additional fuel (<i>i.e.</i> , not from their production streams) to sustain a continuous pilot flame. EPA also solicits comment on the emissions and costs associated with maintaining a continuous pilot light when no emissions from the unit are being sent to the flare (whether the fuel used for the pilot light is an additional fuel (such as propane) or from the sites production stream (<i>e.g.</i> , natural gas)).
III.7b	Control Devices: EPA Method 22 “as found” conditions: The EPA solicits comment on whether a 24-operating-hours grace period suffices to accommodate the potential situations raised by petitioners, particularly considering the frequency of intermittent venting or accessibility of some sites.
III.7c	Control Devices - Temporary control devices and backup control devices: The EPA solicits comment on the use of BCDs, specifically on how BCDs differ from the permanently installed control devices operating at a given facility. The EPA additionally requests information on the incidence of use and the number of BCDs across the industry and solicits comment on how to define BCDs so as to not inadvertently incentivize their use over permanently installed control devices.
III.7d	Control Devices: Temporary process controllers: The EPA invites comment on the incidence of standalone TPCs present during the construction phase of a well and what the alternate standard from the zero-emitting provisions in the March 2024 Final Rule for these devices should be, along with providing any supporting information that the EPA can consider regarding TPCs that are not utilized as part of a TCD configuration.
III.7e	Control Devices: Control device categories: The EPA is clarifying control device requirements by including seven definitions from NESHAP subpart CC for Petroleum Refineries in NSPS OOOOb. The EPA solicits comment on proposing to add these definitions to NSPS OOOOb (40 CFR 60.5430b) for clarity.
III.7f	Control Devices: OTM-52A: The EPA is soliciting comment on the practical use of a method based on OTM-52A for demonstrating compliance with the NSPS OOOOb stack testing requirements for enclosed combustion devices. Specifically, the EPA seeks feedback on field applicability, data quality, and implementation feasibility of using a combustion-efficiency-based method in lieu of traditional removal efficiency approaches. The EPA also requests general comments on the OTM-52A method, including but not limited to, test duration, procedures, and QA/QC. The Agency is also requesting comment on whether the provisions for alternative test methods in 40 CFR 60.5412b(d) would prevent the use of a combustion efficiency method, like OTM-52A, and whether different performance testing requirements should be considered for enclosed combustion devices that operate intermittently.
III.7g	Control Devices: OTM-52A: The EPA is taking comment on whether the EPA should specifically allow by rule the use of OTM-52A, at least until the Agency develops its own official version (<i>i.e.</i> , EPA Method “XX”). In addition to the broad question of whether OTM-52A (or a method based on OTM-52A) should be allowed, the EPA is taking comment on any specifics

	related to how the alternative could be incorporated, and whether it would require any other changes (such as an alternative compliance limit) to demonstrate any differences between a testing approach on removal efficiency vs combustion efficiency, and specifically what those changes should be.
III.8a	Equipment Leaks at Gas Plants: Low-e valve repair requirements: The EPA solicits low-E valve versus non-low-E valve cost information.
III.8b	Equipment Leaks at Gas Plants: Low-e valve repair requirements: The EPA proposes to amend the March 2024 Final Rule to allow owners and operators to conduct a “first attempt at repair” of a leaking valve as defined in 40 CFR 60.5430b and 60.5430c prior to being required to utilize a low-E valve or low-E packing to replace or repack a leaking valve. The EPA solicits comment on this proposed change.
III.8c	Equipment Leaks at Gas Plants: De minimis VOC or methane applicability threshold: The Agency requests specific information and monitoring data for processing equipment at natural gas plants that would support a 1 percent by weight equipment applicability methane concentration threshold.
III.8d	Equipment Leaks at Gas Plants: De minimis VOC or methane applicability threshold: The Agency is also requesting specific information and monitoring data for processing equipment at natural gas plants to support a 10 percent by weight equipment applicability VOC concentration threshold.
III.8e	Equipment Leaks at Gas Plants: De minimis VOC or methane applicability threshold: The Agency also solicits general comments on all aspects of EPA’s proposed changes related to the de minimis VOC or methane applicability threshold.
III.8f	Equipment Leaks at Gas Plants: For purposes of setting monitoring requirements for equipment leaks at gas plants, the EPA seeks comment (including data and detailed information) on how often equipment leaks are found at gas plants, the approximate volume of gas emitted during a typical fugitive emissions event at a gas plant, estimates regarding the approximate length of time that equipment leak events lasts at gas plants, and the cost of conducting monitoring for equipment leaks (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs).
III.8g	Equipment Leaks at Gas Plants. The EPA is soliciting comment on the cost effectiveness and cost reasonableness of the gas plant requirements generally. The EPA is specifically requesting information on the appropriate frequency, type of monitoring technology, and other relevant information that may improve the EPA’s cost effectiveness and cost reasonableness analysis, allowing the EPA to better target emission reductions and the EPA also seeks comment on whether the gas plant requirements in the March 2024 Final Rule are necessary considering this information.
III.9a	Associated Gas from Wells Producing Primarily Oil: The EPA solicits comment and information on the proportion of owners and operators that also own or operate their own midstream sales line infrastructure.
III.9b	Associated Gas from Wells Producing Primarily Oil: The EPA is also seeking comment on an alternative approach which would maintain the current structure of the associated gas requirements (along with the BSER analysis from the March 2024 Final Rule) in both NSPS OOOOb and EG OOOOc while attempting to address the specific concerns raised by industry stakeholders through targeted regulatory amendments.
III.9c	Associated Gas from Wells Producing Primarily Oil: The EPA solicits comment on allowing an extension of the temporary flaring durations under 40 CFR 60.5377b(d)(3) and (4) and 40 CFR 60.5391c(c)(3) and (4) per incident; and the definition of a “temporary interruption incident” for 40 CFR 60.5377b(d)(3) and (4) as well as 40 CFR 60.5391c(c)(3) and (4). Specifically, whether the definition should include any additional examples of temporary interruption incidents described in previous rulemaking, such as, for example, gas gathering line or collection system capacity constraints, gas gathering line or collection system outages or maintenance, well surges

	exceeding gas gathering line or collection system capacity, and situations in which the gas gathering line or collection system will not accept the gas due to quality concerns (of the associated gas from the well or from other wells in the area).
III.9d	Associated Gas from Wells Producing Primarily Oil: In correspondence with the industry, owners and operators did not offer specific alternative durations needed to address these temporary interruption incidents. The EPA is requesting comment and supporting information regarding the typical durations of midstream service outages and what an appropriate and reasonable timeline would be for resolving gas quality issues.
III.9e	Associated Gas from Wells Producing Primarily Oil: The Agency is soliciting comment on whether an annual temporary flaring limit should be included and, if so, what a reasonable limit would be.
III.9f	Associated Gas from Wells Producing Primarily Oil: Notifications and periodic reports: The EPA is soliciting comment on whether it could require that an initial notification be submitted to the Agency as soon as an owner or operator becomes aware of a temporary interruption incident that results in the need to flare, and if so, what documentation could be required to explain why no other compliance method under NSPS OOOOb or EG OOOOc is possible for controlling the associated gas. The Agency also solicits comment on whether to require an owner or operator submit a notification to the EPA upon resolution of the temporary interruption incident, and similarly, whether during the incident, the EPA should require periodic reports on the status of the temporary interruption incident and the steps being taken to resolve it or whether such notifications and periodic reports documenting these incidents should be required to be maintained as records.
III.9g	Associated Gas from Wells Producing Primarily Oil - Annual and periodic reports: The EPA requests comment on whether the Agency should require that owners and operators include in annual reports information related to temporary interruption incidents (<i>i.e.</i> , when the temporary interruption incident started, circumstances related to the incident, and resolution status). The Agency is also soliciting comment on the appropriate frequency of periodic status reports related to the status of a temporary interruption incident, and whether commenters agree that EPA should require such reports.
III.9h	Associated Gas from Wells Producing Primarily Oil: The Agency is requesting comment on what constitutes an appropriate time frame for limiting routine flaring for new wells if it were to include a limit on the duration an owner or operator may flare during pipeline construction, <i>e.g.</i> , 3 years from the time the well begins operation. The Agency is requesting comment on what constitutes an appropriate time frame for limiting routine flaring for new wells under this scenario.
III.9i	Associated Gas from Wells Producing Primarily Oil: In instances where flaring of associated gas is necessary during pipeline construction, the EPA is soliciting comment on whether owners and operators should be required to submit in their initial annual report the details of the contractual arrangement, as well as the schedule that outlines when compliance will be achieved. In each subsequent annual report, the owner or operator could be required to submit an update on the status of the effort, along with a detailed explanation of any delays in schedule. The EPA is also specifically requesting comment on whether separate requirements should be included for these wells, or whether the considered requirement for annual technical infeasibility determinations and certifications would achieve the same objective of requiring compliance with 40 CFR 60.5377b(a) when the gas gathering line or collection system is able to accept the associated gas produced.
III.10a	Well Site Subcategorization: The EPA requests comment on the appropriate consideration of "energy requirements" and whether the energy impacts

	from not being able to produce oil and natural gas in the United States allows treating marginal and conventional wells differently.
III.10b	Well Site Subcategorization: Sweetening units: The Agency is requesting information on whether sweetening units are located at marginal well sites and whether different standards should be included in NSPS OOOOb for sweetening units located at marginal well sites.
III.10c	Well Site Subcategorization: Oil well associated gas: The EPA proposes to conclude that routing to an existing control device if one is available is not the best control option for associated gas. The EPA is requesting comment on these assumptions and whether routing to an existing control device should be considered a viable option for associated gas at marginal oil wells.
III.10d	Well Site Subcategorization: The EPA requests comment on the proposed weighting factors (see section III.K.i of this preamble) used in the BSER analysis.
III.10e	Well Site Subcategorization: The Agency is requesting comment on a subcategorization approach to marginal well sites that creates two subcategories of marginal well sites, where there would be different standards for well sites with average production levels of 6 boe per day or less and well sites with average production levels greater than 6 boe and less than or equal to 15 boe per day. This subcategorization would likely result in more stringent standards for the higher producing subcategory (with higher profits) and less stringent standards for the lower emitting subcategory.
III.10f	Well Site Subcategorization: Although stakeholders suggested the aforementioned cut-off levels (highlighted in Question III.10e), the EPA is requesting comment on whether there are other reasonable ways to subcategorize based on production (e.g. would subcategories at other production levels be more appropriate) or whether further distinctions may be needed to appropriately target meaningful emissions reductions.
III.10g	Well Site Subcategorization: The EPA is soliciting comment on an alternative set of requirements if the Agency establishes two marginal well site subcategories. The EPA is specifically requesting comment on this set of compliance options for a dual subcategory for marginal well sites (see section III.K.1.l of this preamble).
III.10h	Well Site Subcategorization: In addition, for purposes of setting fugitive emissions monitoring requirements for marginal wells, the EPA seeks comment (including data and detailed information) on how often fugitive emissions are found at marginal well sites, the approximate volume of gas emitted during a typical fugitive emissions event at a marginal well site, estimates regarding the approximate length of time that fugitive events last at marginal well sites, and the cost of conducting fugitive emissions monitoring at a marginal well site (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs).
III.10i	Well Site Subcategorization: The EPA is also soliciting comment on the cost effectiveness and cost reasonableness of the fugitive emissions monitoring requirements in this proposal for marginal wells. Specifically, the EPA is requesting information on the appropriate frequency, type of monitoring technology, equivalent monitoring technologies for various equipment types, and other relevant information that may improve EPA's cost effectiveness and cost reasonableness analysis, allowing the EPA to better target emission reductions. (Question III.10i) .
III.10j	Well Site Subcategorization: The Agency also seeks comment on whether the fugitive emissions monitoring requirements in NSPS OOOOb and EG OOOOc are necessary for marginal wells considering this information. (Question III.10k)
III.10k	Well Site Subcategorization: This proposal also includes proposed instances that constitute a modification to an existing marginal well site. The EPA is seeking comment on what level or type of stimulation for the purposes of increased production could result in increases in emissions.

III.10l	Well Site Subcategorization: The EPA is proposing the following definition. “ <i>Conventional well site</i> means a well site with only conventional wells.” The EPA is also proposing to add to the definition of “well site” the phrase “this term encompasses both unconventional and conventional well sites.” The Agency requests comment on these definitions.
III.10m	Well Site Subcategorization: The EPA proposes to conclude that the subset of total oil and gas wells that are conventional is largely the same subset of wells that have production levels of 15 boe per day or less (<i>i.e.</i> , marginal wells). The Agency is requesting comment on the conclusion that the subset of wells that are marginal largely overlaps with the subset that are conventional wells.
III.10n	Well Site Subcategorization: The EPA is specifically requesting comment on the accuracy of our conclusion that most conventional wells are low production and likely have lower emissions than unconventional wells.
III.10o	Well Site Subcategorization: If commenters on this proposal do not agree with our conclusion that most conventional wells are low production wells that likely have lower emissions than unconventional wells, the EPA is requesting information on the prevalence of high production conventional wells that have emissions equivalent to, or higher than, unconventional wells.
III.10p	Well Site Subcategorization: The EPA is requesting comment on whether all unconventional wells should be subject to the more stringent standards even in instances where well production is low.
III.10q	Well Site Subcategorization: In addition, for purposes of setting fugitive emissions monitoring requirements for conventional wells, the EPA seeks comment (including data and detailed information) on how often fugitive emissions are found at conventional well sites, the approximate volume of gas emitted during a typical fugitive emissions event at a conventional well site, estimates regarding the approximate length of time that fugitive events last at conventional well sites, and the cost of conducting fugitive emissions monitoring at a conventional well site (e.g., capital costs, variable costs, changes to business practices, safety implications of conducting the fugitives monitoring, and any other relevant costs).
III.10r	Well Site Subcategorization: The EPA is also soliciting comment on the cost effectiveness and cost reasonableness of the fugitive emissions monitoring requirements in this proposal for conventional wells. Specifically, the EPA is requesting information on the appropriate frequency, type of monitoring technology, equivalent monitoring technologies for various equipment types, and other relevant information that may improve EPA’s cost effectiveness and cost reasonableness analysis, allowing the EPA to better target emission reductions.
III.10s	Well Site Subcategorization: The Agency also seeks comment on whether the fugitive emissions monitoring requirements in NSPS OOOOb and EG OOOOc are necessary for conventional wells considering this information.
III.10t	Well Site Subcategorization: This proposal also includes proposed instances that constitute a modification to an existing conventional well site. EPA is seeking comment on what level or type of stimulation for the purposes of increased production could result in increases in emissions.
IV.1	Draft CEDRI NSPS OOOOb Template. A draft version of the proposed templates for these reports is included in the docket for this action. The EPA specifically requests comment on the content, layout, and overall design of the template(s).
IV.2	Draft CEDRI NSPS OOOOc Template. A draft version of the proposed templates for these reports is included in the docket for this action. The EPA specifically requests comment on the content, layout, and overall design of the template(s).
VI.1	The EPA requests comment on the modeling assumptions, data inputs, and methodological choices used in the accompanying RIA, including assumptions around site equipment assignment, annual operating costs, and production decline rates.

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VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review

The Office of Information and Regulatory Affairs (OIRA) has determined that this action is a “significant regulatory action” as defined in Executive Order 12866, and has been reviewed by OIRA accordingly. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket for this action. See memorandum entitled

Regulatory Impact Analysis for 2026 NSPS & EG Reconsideration for the EPA’s regulatory impact analysis.

The EPA estimated present values (PV) and equivalent annualized values (EAV) of the estimated increase in economic surplus of this proposed reconsideration and co-proposal in 2024 dollars over the 2025 to 2050 period. Estimated increases in economic surplus include reductions in compliance cost expenditures from industry, as well as increased value to consumers from lower commodity prices and revenues to industry from increased production. Surplus changes also account for the forgone value of natural gas captured as a result of less stringent compliance obligations. Changes beyond compliance cost savings are represented by the Savings

from Energy Market Impacts values. The aspects of the proposed reconsideration reflected in the quantitative analysis are the subcategorization and standard setting for marginal well sites and removal of route to sales as the BSR for associated gas. The aspects of the co-proposal reflected in the quantitative analysis are the subcategorization and standard setting of conventional well sites and removal of route to sales as the BSR for associated gas.

Table 35 presents the estimated additional economic surplus of this proposed reconsideration and co-proposal in 2024 dollars for the baseline which includes the March 2024 Final Rule (*i.e.*, the primary baseline analyzed in the RIA). This table presents the PV and EAV of these estimates discounted at three percent and seven percent.

Table 35. Present Value and Equivalent Annualized Value of Increased Economic Surplus Estimates of the Proposed Action from 2025-2050 (Millions of 2024\$)^a

		3 Percent Discount Rate		7 Percent Discount Rate	
		PV	EAV	PV	EAV
Proposed Reconsideration	Compliance Cost Savings ^b	\$42,000	\$2,500	\$29,000	\$2,500
	Savings from Energy Market Impacts	\$3,000	\$200	\$3,000	\$300
	Net Surplus	\$45,000	\$2,700	\$32,000	\$2,800
Co-Proposal	Compliance Cost Savings ^b	\$39,000	\$2,300	\$27,000	\$2,300
	Savings from Energy Market Impacts	\$370	\$22	\$1,000	\$100
	Net Surplus	\$39,000	\$2,300	\$28,000	\$2,400

^a Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.

^b The Compliance Cost Savings rows include the change in value of product recovery.

The analysis, which is contained in the Regulatory Impact Analysis for this rulemaking, is consistent with Executive Order 12866 and is available in the docket for this action.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action because the action is expected to result in cost savings.

C. Paperwork Reduction Act (PRA)

The Office of Management and Budget (OMB) previously approved the information collection activities for the March 2024 Final Rule under the PRA and has assigned OMB control number

2060–0721. The approved information collection request (ICR) number is 2523.07. You can find a copy of the previously submitted ICR in Docket EPA–HQ–OAR–2021–0317.

The EPA has revised the approved ICR to reflect proposed recordkeeping and reporting requirement changes associated with the EPA’s proposed amendments to rescind the Super Emitter Program; to subcategorize different types of well sites into marginal well sites and conventional well sites and the reduction of recordkeeping and reporting requirements for emission sources located at marginal well sites; and the proposed reduction of recordkeeping

and reporting requirements related to liquids unloading, process controllers, pumps, fugitive emissions, storage vessels, covers and CVSS, equipment leaks at gas plants, and associated gas.

The information collection activities are necessary for the Administrator to confirm the compliance status of affected new and modified oil and natural gas facilities. These recordkeeping and reporting requirements are authorized by CAA section 114. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the EPA regulations set forth in 40 CFR 2.201 *et*

seq., Chapter 1, Part 2, Subpart B-Confidentiality of Business Information.

Respondents/affected entities: Oil and natural gas operators and owners.

Respondent's obligation to respond: Mandatory (per CAA § 114).

Estimated number of respondents: 2,786.

Frequency of response: Varies depending on affected facility.⁴⁵¹

Total estimated burden: 609,516 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$60,916,791 (\$2024) (per year), includes \$14,177,335 in annualized capital costs.

The total estimated burden represents a reduction of 274,109 hours (per year) and a reduction of 16,079,963 (\$2024) compared to the existing collection for NSPS OOOOb. The proposed amendments are expected to result in only minimal changes to the ICR burden previously estimated for owners/operators under NSPS OOOOa and for states under EG OOOOc and overall, the burden and associated costs would remain largely the same.

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 EPA's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the Agency 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 November 30, 2026.

The revised ICR based on this proposed rule had been submitted for approval to the OMB under the PRA. The revised ICR document that the EPA prepared has been assigned EPA ICR number 2523.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

⁴⁵¹ The specific frequency for each information collection activity within this request is shown in tables 1a through 1d of the Supporting Statement in the public docket.

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. This action relieves regulatory burden on, and provides overall cost savings for, the small entities subject to the rule. This proposed reconsideration will lead to an estimated reduction in EAV costs over the 2027 to 2050 timeframe, discounted to 2025 and in 2024 dollars, of about \$2.7 and \$2.8 billion per year at three and seven percent discount rates, respectively; similarly the co-proposal is estimated to have a reduction in EAV costs, over the same timeframe, of about \$2.3 and \$2.4 billion per year at three and seven percent discount rates, respectively. Therefore, the EPA has concluded that this action will relieve regulatory burden for all directly regulated small entities.

For further details, see the document entitled *Regulatory Impact Analysis for 2026 NSPS & EG Reconsideration*, available in the docket for this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector. This action proposes changes to NSPS OOOO, OOOOa, and NSPS OOOOb and the model rules within EG OOOOc based on petitions for reconsideration received on the March 2024 Final Rule requirements and corrects and clarifies regulatory text.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. However, the EPA recognizes that States will have a substantial interest in this action and any future revisions to associated requirements. This action proposes changes to NSPS OOOO, OOOOa, and NSPS OOOOb and the model rules within EG OOOOc based on some of the petitions for reconsideration received on the March 2024 Final Rule requirements and corrects and clarifies regulatory text.

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

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA will engage in consultation with tribal officials during the development of this action.

As described in the March 2024 Final Rule preamble, the EPA consulted with tribal officials consistent with the EPA Policy on Consultation with Indian Tribes early in the process of developing the March 2024 regulation to permit them to have meaningful and timely input into its development.⁴⁵² A summary of that consultation is provided in a memorandum to the docket for the March 2024 Final Rule.⁴⁵³

As part of the March 2024 Final Rule record, the EPA found that 112 distinct areas of Indian country are located within 50 miles of an affected oil and natural gas source, and 32 Tribes have one or more oil or natural gas sources on their Indian country lands.⁴⁵⁴ While many of the affected and designated facilities impacted by final NSPS and EG in Indian country are owned by private entities, some Tribes also own affected and or designated facilities. The EPA explained there would be Tribal implications associated with the March 2024 rulemaking in the case where a unit is owned by a Tribal government or in the case of the NSPS, a Tribal government is given delegated authority to enforce the rulemaking. The EPA believes that this information is still accurate for this reconsideration proposal. Consistent with the EPA Policy on Consultation with Indian Tribes, the EPA will send letters to all 575 Federally recognized Tribes to offer consultation on this proposal.

As a reminder, Tribes are not required to develop plans to implement the EG under CAA section 111(d) for designated existing sources. The EPA notes a future final reconsideration rule does not directly impose specific requirements on designated facilities, including those located in Indian country. Before developing any standards for sources in Indian country, the EPA would consult with leaders from affected Tribes.

⁴⁵² 89 FR 17028, 17029 (March 8, 2024).

⁴⁵³ Document ID No. EPA-HQ-OAR-2021-0317–1510.

⁴⁵⁴ 86 FR 63143 (November 15, 2021).

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

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

This action proposes changes to NSPS OOOO, OOOOa, and NSPS OOOOb and the model rules within EG OOOOc based on some of the petitions for reconsideration received on the March 2024 Final Rule requirements and

corrects and clarifies regulatory text. The EPA has determined that this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health effects, the EPA's Policy on Children's Health does not apply.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the EPA has concluded that this action is not likely to have any adverse energy effects because this action proposes changes to NSPS OOOO, OOOOa, and NSPS OOOOb and the model rules within EG OOOOc

based on petitions for reconsideration received on the March 2024 Final Rule requirements and corrects and clarifies regulatory text. As a result of the proposed and co-proposed changes, which include deregulatory changes that would reduce burdens on and compliance difficulties experienced by the oil and natural gas industry, no adverse impacts are associated with this action. For more information, see Section 6 of the RIA.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve any new technical standards.

Lee Zeldin,
Administrator.

[FR Doc. 2026-22082 Filed 10-28-26; 8:45 am]

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Part III

Department of Health and Human Services

42 CFR Chapter I

Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Oral Fluid (OFMG); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter I

RIN 0930-AA41

Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Oral Fluid (OFMG)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Proposed revisions to mandatory guidelines.

SUMMARY: The Department of Health and Human Services (“HHS” or “Department”) is proposing to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid (OFMG) published on October 12, 2023.

DATES: Submit comments on or before December 28, 2026.

ADDRESSES: In commenting, please refer to docket number SAMHSA–2026–0001. Because of staff and resource limitations, SAMHSA cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

- *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow “Submit a comment” instructions.
- *By regular mail.* You may mail written comments to the following address: SAMHSA, Center for Substance Abuse Prevention (CSAP), Division of Workplace Programs (DWP), 5600 Fishers Lane, Room 16N02, Rockville, MD 20857. Please allow sufficient time for mailed comments to be received before the close of the comment period.
- *By express or overnight mail.* You may send written comments to the following address: SAMHSA, CSAP, DWP, 5600 Fishers Lane, Room 16N02, Rockville, MD 20857.
- *By hand or courier.* You may deliver your written comments by hand or courier to the following address prior to the close of the comment period: SAMHSA, CSAP, DWP, 5600 Fishers Lane, Room 16N02, Rockville, MD 20857. If you intend to deliver your comments to the Rockville address, please call (240) 276–2600 in advance to schedule your arrival with one of our staff members. Because access to the SAMHSA building is secure, people without federal government identification are encouraged to schedule their delivery or to leave

comments with the security guard at the front desk located in the main lobby of the building.

All comments received before the close of the comment period will be available for viewing by the public. Please note that all comments are posted in their entirety, including personal or confidential business information that is included in the comment. SAMHSA will post all comments before the close of the comment period on the following website: <https://www.regulations.gov>. Use the website’s search function to view the associated comments.

Comments received before the close of the comment period will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at SAMHSA, CSAP, DWP, 5600 Fishers Lane, Rockville, MD 20857, Monday through Friday of each week, excluding federal holidays, from 8:30 a.m. to 4:00 p.m. To schedule an appointment to view public comments, please call (240) 276–2600.

FOR FURTHER INFORMATION CONTACT:

Eugene D. Hayes, Ph.D., MBA, SAMHSA, CSAP, DWP; 5600 Fishers Lane, Room 16N02, Rockville, MD 20857, by telephone (240) 276–1459 or by email at Eugene.Hayes@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

This notice of proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using OFMG includes revisions that will: clarify the types of laboratories that may be certified to conduct testing for federal agency workplace drug testing programs, reflect the Department’s decision to publish the Authorized Drug Testing Panels only when revised rather than each year, revise the initial test batch quality control requirements for laboratories, and allow a split testing laboratory to test for any HHS-authorized biomarker to reconfirm substitution based on a biomarker test (*i.e.*, may test for a different biomarker). In addition, some wording changes have been made for clarity and for consistency with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) or to apply to any authorized specimen type and to clarify direct observed collection procedures.

The Department is concurrently publishing a separate **Federal Register** Notice proposing revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using UrMG, including the same or similar

revisions proposed for the OFMG, where appropriate.

The current authorized drug testing panel and report nomenclature table for urine and for oral fluid were published on January 16, 2025 (90 FR 4662).

Background

Pursuant to its authority under Section 503 of Public Law 100–71, 5 U.S.C. 7301, and Executive Order No. 12564, HHS establishes the scientific and technical guidelines for Federal Workplace Drug Testing Programs and establishes standards for certification of laboratories engaged in drug testing for federal agencies. Using data obtained from the Federal Workplace Drug Testing Programs and HHS-certified laboratories, the Department estimates that 275,000 urine specimens are tested annually by federal agencies. No laboratories have been certified to test oral fluid at this time.

As required, HHS originally published the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Guidelines) in the **Federal Register** (FR) on April 11, 1988 (53 FR 11979). SAMHSA subsequently revised the Guidelines on June 9, 1994 (59 FR 29908), September 30, 1997 (62 FR 51118), November 13, 1998 (63 FR 63483), April 13, 2004 (69 FR 19644), and November 25, 2008 (73 FR 71858). SAMHSA published the renamed Mandatory Guidelines for Federal Workplace Drug Testing Programs using UrMG on January 23, 2017 (82 FR 7920), and the first Mandatory Guidelines for Federal Workplace Drug Testing Programs using OFMG on October 25, 2019 (84 FR 57754). SAMHSA published the current UrMG (88 FR 70768) and current OFMG (88 FR 70814) on October 12, 2023.

Proposed Revisions to the Guidelines

This preamble describes the proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using OFMG, and the rationale for the changes.

Subpart A—Applicability

Section 1.5 defines terms used in the OFMG. The Department has added terms and revised definitions in this section in accordance with proposed changes to these Guidelines.

The Department has deleted “Gender Identity” (*i.e.*, term and definition) to enhance the clarity of direct observed collection procedures.

The Department updated the definition of “Laboratory” clarifying that, in addition to certifying laboratories to conduct all required testing of primary (A) and split (B)

specimens, the Department may certify laboratories that test split (B) specimens only and/or conduct additional drug or specimen validity tests for primary and split specimens in accordance with these Mandatory Guidelines.

The Department edited the definition of “Negative Result” for clarity.

The Department edited the definition of “Substituted Specimen” to refer to a test for an HHS-authorized biomarker rather than specifically referring to the Biomarker Testing Panel, to reflect the Department’s review and approval process for an HHS-certified test facility to implement testing for biomarker for use in Federal workplace drug testing programs.

Section 1.7 describes the circumstances that constitute a refusal to test. The Department provided additional examples for clarity.

Subpart B—Oral Fluid Specimens

Section 2.2 describes the circumstances under which an oral fluid specimen may be collected. The Department reviewed and revised Section 2.2(a) and other wording in the current OFMG to clarify that pre-employment tests are performed for all individuals applying for a testing designated position, including federal agency employees.

Subpart C—Oral Fluid Specimen Tests

Section 3.1 describes the tests that are conducted on an oral fluid specimen. The Department revised Section 3.2 to address when a specimen may be tested for drugs other than those in the drug testing panel and inserted a new Section 3.3 to describe the process for an HHS-certified laboratory or IITF to obtain HHS approval to test for a biomarker other than those in the biomarker testing panel. The Department renumbered subsequent items in Section 3 accordingly.

Section 3.5 describes the publication of drug and biomarker testing panels with analytes and cutoffs for oral fluid. The Department removed the drug testing panel from the OFMG and deleted the requirement to publish the Authorized Drug Testing Panels annually. HHS will publish a FR Notice when drug and/or biomarker testing panels are changed.

Subpart H—Oral Fluid Specimen Collection Procedure

Section 8.1 describes privacy requirements for oral fluid collection. The Department revised item b to refer to the sex of the collector and donor to enhance the clarity of direct observed collection procedures.

Section 8.6(b) stated that a donor demonstrates their inability to provide an oral fluid specimen when there is an insufficient volume or no oral fluid after 15 minutes of using the collection device. Because device manufacturers may establish different time limits for their devices, the Department has replaced the 15-minute time limit with “the time limit specified by the device manufacturer.”

The Department reworded item c in Section 8.8 for clarity and to use the same wording in the UrMG and OFMG.

Subpart I—HHS Certification of Laboratories and IITFs

The Department revised the language in item 9.5(a)(1) to refer to the drug testing panel rather than “drug classes listed in the drug testing panel.”

Section 9.6 describes National Laboratory Certification Program (NLCP) performance testing (PT) requirements for an applicant oral fluid laboratory and Section 9.7 describes PT requirements for an HHS-certified oral fluid laboratory. The Department reworded item a.3 in both sections to clarify that PT criteria for initial drug test results are for laboratories that will conduct initial drug tests.

Subpart K—Laboratory

Section 11.11 describes the initial drug test batch quality control requirements for an oral fluid laboratory. The Department revised item b to apply to the controls in each initial drug test batch rather than to calibrators and controls and reduced the required percentage of controls from 10 percent to 4 percent of the total controls and specimens in the batch.

Subpart M—Medical Review Officer (MRO)

Section 13.5 describes MRO actions when reviewing an oral fluid specimen’s test result. The Department edited wording in Section 13.5(e) to address different MRO actions to be taken for invalid specimens depending on the reason for the test. The Department revised Section 13.5(e)(1)(ii) to specify that the MRO may direct an unobserved urine collection based on the reason for the invalid oral fluid result if the agency allows urine testing. The Department also revised Section 13.5(e)(2)(ii) to require the MRO to recommend recollection of a urine specimen under direct observation when the donor’s first oral fluid specimen and second recollected oral fluid specimen are invalid.

Section 13.6 describes MRO action when the collector reports that the donor did not provide a sufficient

amount of oral fluid for a drug test. The Department has reviewed and revised the previous wording in Section 13.6(b) to clarify different MRO actions to be taken for invalid specimens depending on the reason for the test.

Subpart N—Split Specimen Tests

Section 14.1 describes when a split (B) oral fluid specimen may be tested. The Department has revised item 14.1(c) to clarify MRO action when a split specimen cannot be tested by a second laboratory because (1) there is no split specimen or the specimen has insufficient volume for testing; (2) the primary specimen was reported as adulterated and there is no second HHS-certified laboratory to test the split specimen for the same adulterant; or (3) the primary specimen was reported as substituted based on a biomarker and there is no second HHS-certified laboratory to test the split specimen (*i.e.*, using the same or a different biomarker test).

Section 14.4 describes how an HHS-certified laboratory tests a split (B) oral fluid specimen when the primary (A) specimen was reported substituted. This section addresses testing of a split specimen when the primary specimen was reported substituted based on biomarker testing. The Department has revised this section to allow the split testing laboratory to test for any HHS-authorized biomarker. It is not necessary to test the split specimen for the same biomarker to reconfirm the primary (A) specimen’s substituted result.

Section 14.6 describes action an MRO takes after receiving the split (B) oral fluid specimen result from the split testing laboratory. The Department has edited and reorganized this section for clarity and to describe these revised requirements:

- When the split laboratory has failed to reconfirm a single or all drug positive results and reported the specimen as adulterated and the primary laboratory cannot perform the test for that adulterant: the MRO directs testing at another HHS-certified laboratory.

- When the split laboratory has failed to reconfirm a single or all drug positive results and reported the specimen as substituted and the primary laboratory cannot perform a biomarker test: the MRO directs testing at another HHS-certified laboratory. It is not necessary to test the primary specimen for the same biomarker to reconfirm the split specimen’s substituted result.

- The Department has maintained the current requirement for immediate recollection of “another specimen using a direct observed collection procedure” but added that the MRO recommends an

observed urine collection if the agency allows urine testing.

The Department also removed the requirement for the MRO to contact the HHS office responsible for coordination of the drug-free workplace program regarding the test results throughout this section.

General Revisions

In addition to the proposed changes described by subpart and section above, the Department has edited the OFMG to address proposed changes and has reworded some items for clarity (e.g., referring to “donors” rather than “employees” or “applicants”) and/or for consistency with the UrMG or to apply to any authorized specimen type.

Impact of These Guidelines on Government Regulated Industries

The Department is aware that these proposed new Guidelines may impact the Department of Transportation and Nuclear Regulatory Commission regulated industries depending on these agencies’ decisions to incorporate the final OFMG revisions into their programs under their own authority.

Costs and Benefits

Costs

The proposed OFMG revisions are not expected to increase current stakeholder costs.

Benefits

The proposed revision to quality control requirements for initial drug test batches in Section 11.11(b) will reduce laboratory burden and expense while maintaining quality. The Department has lowered the percentage of controls in each initial drug test batch from 10 percent to 4 percent of the total controls and specimens in the batch. This will reduce time, labor, and material costs (e.g., purchasing, initial verification, batch review, monitoring control results). Initial drug testing is used to report specimens as negative; specimens with a positive initial drug test are reflexed to confirmatory testing. The Department has maintained the 10 percent control requirement for confirmatory test batches.

Other OFMG revisions that will reduce stakeholder burden include those related to biomarker testing which are expected to lead to definitive results and reduce the need for specimen recollection. For example, Section 14.4 has been revised to allow a split testing laboratory to test for any HHS-authorized biomarker to reconfirm substitution, rather than requiring the same biomarker test used for the primary specimen. This revision also

strengthens the federal government’s ability to identify illicit drug use and donor attempts to subvert drug tests.

Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The title and description of the information collected, and respondent description are shown in the following paragraphs with an estimate of the annual reporting, disclosure, and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of HHS’s functions, including whether the information will have practical utility; (2) evaluate the accuracy of HHS’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.

Title: The Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid.

Information Collection/Record Keeping Requirements

The information collection requirements (i.e., reporting and recordkeeping) in the current Guidelines, which establish the scientific and technical guidelines for Federal Workplace Drug Testing Programs and establish standards for certification of laboratories engaged in oral fluid drug testing for federal agencies under authority of 5 U.S.C. 7301 and Executive Order 12564, are approved by the Office of Management and Budget (OMB) under control number 0930–0158. The Federal Drug Testing Custody and Control Form (Federal CCF) used to document the collection and chain of custody of urine and oral fluid specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination; NLCP

application; the NLCP Laboratory Information Checklist; and recordkeeping requirements in the current Guidelines, as approved under control number 0930–0158, will remain in effect.

In support of the Government Paperwork Reduction Act, the Department revised the federal CCF to enable its use as an electronic form (78 FR 42091, July 15, 2013) and developed requirements and oversight procedures to ensure that HHS-certified test facilities and other service providers (e.g., collection sites, MROs) using an electronic federal CCF (ECCF) maintain the accuracy, security, and confidentiality of electronic drug test information. Before a federal ECCF can be used for federal agency specimens, HHS-certified test facilities must submit detailed information and proposed standard operating procedures (SOPs) to the NLCP for SAMHSA review and approval and undergo an NLCP inspection focused on the proposed ECCF.

Since 2013, SAMHSA has encouraged the use of federal ECCFs and other electronic processes in HHS-certified test facilities, when practicable, for federally regulated testing operations. In accordance with Section 8108(a) of the SUPPORT for Patients and Communities Act, SAMHSA has set a deadline of August 31, 2026, for all HHS-certified laboratories to submit a request for approval of an electronic (digital) federal CCF. To assist all HHS-certified laboratories, SAMHSA has implemented an ECCF Recognition Program to recognize ECCF systems that meet program requirements and can be used by any HHS-certified laboratory or IITF. This program is expected to facilitate the process for HHS-certified test facilities seeking SAMHSA approval to use an ECCF and enable all HHS-certified test facilities (regardless of size) to meet the August 31, 2026, deadline for a digital ECCF submission.

Description: The Mandatory Guidelines establish the scientific and technical guidelines for federal drug testing programs and establish standards for certification of laboratories engaged in drug testing for federal agencies under authority of Public Law 100–71, 5 U.S.C. 7301 note, and Executive Order No. 12564. Federal drug testing programs test applicants for safety-sensitive positions, individuals involved in accidents, individuals tested for cause, and random testing of employees in safety-sensitive positions.

Description of Respondents: Individuals or households, businesses, or other-for-profit and not-for-profit institutions.

The burden estimates in the tables below are based on the following number of respondents: 10,500 donors

who apply for employment or are employed in testing designated positions, 100 collectors, 10 oral fluid

specimen testing laboratories, and 100 MROs.

ESTIMATE OF ANNUAL REPORTING BURDEN

Section	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
9.2(a)(1)	Laboratory or IITF required to submit application for certification.	10	1	3	30
9.10(a)(3)	Materials to submit to become an HHS inspector	10	1	2	20
11.3	Laboratory submits qualifications of responsible person (RP) to HHS.	10	1	2	20
11.4(c)	Laboratory submits information to HHS on new RP or alternate RP.	10	1	2	20
11.20	Specifications for laboratory semiannual statistical report of test results to each federal agency.	10	5	0.5	25
13.8 and 14.7	Specifies that MRO must report all verified primary and split specimen results to the federal agency.	100	14	0.05 (3 min)	70
13.11	Specifications for MRO semiannual report to the Secretary or designated representative for federal agency specimen results that were laboratory-positive and MRO-verified negative.	100	2	0.5	100
16.1(b) and 16.5(a)	Specifies content of request for informal review of suspension/proposed revocation of certification.	1	1	3	3
16.4	Specifies information appellant provides in first written submission when laboratory suspension/revocation is proposed.	1	1	0.5	0.5
16.6	Requires appellant to notify reviewing official of resolution status at end of abeyance period.	1	1	0.5	0.5
16.7(a)	Specifies contents of appellant submission for review.	1	1	50	50
16.9(a)	Specifies content of appellant request for expedited review of suspension or proposed revocation.	1	1	3	3
16.9(c)	Specifies contents of review file and briefs	1	1	50	50
Total		256			392

The following reporting requirements are also in the proposed Guidelines, but have not been addressed in the above reporting burden table: collector must report any unusual donor behavior or refusal to participate in the collection process on the federal CCF (Sections 1.8, 8.9); collector annotates the federal

CCF when a sample is a blind sample (Section 10.3(a)); MRO notifies the federal agency and HHS when an error occurs on a blind sample (Section 10.4(d)); and Sections 13.6 and 13.7 describe the actions an MRO takes for the medical evaluation of a donor who cannot provide an oral fluid specimen.

SAMHSA has not calculated a separate reporting burden for these requirements because they are included in the burden hours estimated for collectors to complete federal CCFs and for MROs to report results to federal agencies.

ESTIMATE OF ANNUAL DISCLOSURE BURDEN

Section	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.3(a), 8.6(b)(2)	Collector must contact federal agency's point of contact.	100	1	0.05 (3 min)	5
11.21, 11.22	Information on drug test that laboratory must provide to federal agency upon request or to donor through MRO.	10	10	3	300
13.8(b)	MRO must inform donor of right to request split specimen test when a positive, adulterated, or substituted result is reported.	100	14	3	4,200
Total		210			4,505

The following disclosure requirements are also included in the proposed Guidelines but have not been addressed in the above disclosure burden table: the collector must explain

the basic collection procedure to the donor and answer any questions (Section 8.3(h)). SAMHSA believes having the collector explain the collection procedure to the donor and

answer any questions is a standard business practice and not a disclosure burden.

ESTIMATE OF ANNUAL RECORDKEEPING BURDEN

Section	Purpose	Number of respondents	Responses/ respondent	Hours/ response	Total hours
8.3, 8.4, 8.5, 8.8	Collector completes federal CCF for specimen collected.	100	380	0.07 (4 min)	2,660
8.8(d) and (f)	Donor initials specimen labels/seals and signs statement on the federal CCF.	38,000	1	0.08 (5 min)	3,040
11.8(a) and 11.17	Laboratory completes federal CCF upon receipt of specimen and before reporting result.	10	1,520	0.05 (3 min)	760
13.4(d) (4), 13.9 (c), 14.7 (c)	MRO completes federal CCF before reporting the primary or split specimen result.	100	380	0.05 (3 min)	1,900
14.1(b)	MRO documents donor's request to have split specimen tested.	100	2	0.05 (3 min)	10
Total		38,310			8,370

The proposed Guidelines contain several recordkeeping requirements that SAMHSA considers not to be an additional recordkeeping burden. In subpart D, a trainer is required to document the training of an individual to be a collector (Section 4.3(a)(3)) and the documentation must be maintained in the collector's training file (Section 4.3(c)). SAMHSA believes this training documentation is common practice and is not considered an additional burden. In subpart F, if a collector uses an incorrect form to collect a federal agency specimen, the collector is required to provide a statement (Section 6.2(b)) explaining why an incorrect form was used to document collecting the specimen. SAMHSA believes this is an extremely infrequent occurrence and does not create a significant additional recordkeeping burden. Subpart H (Section 8.4(d)) requires collectors to enter any information on the federal CCF of any unusual findings during the oral fluid specimen collection procedure. These recordkeeping requirements are an integral part of the collection procedure and are essential to documenting the chain of custody for the specimens collected. The burden for these entries is included in the recordkeeping burden estimated to complete the federal CCF and is, therefore, not considered an additional recordkeeping burden. Subpart K describes a number of recordkeeping requirements for laboratories associated with their testing procedures, maintaining chain of custody, and keeping records (*i.e.*, Sections 11.1(a) and (d); 11.2(b), (c), and (d); 11.6(b); 11.7(c); 11.8; 11.10(a); 11.13(a); 11.16; 11.19(a), (b), and (c); 11.20; 11.21(a) and 11.22). These recordkeeping requirements are necessary for any laboratory to conduct forensic drug testing and to ensure the scientific supportability of the test results. Therefore, they are considered to be

standard business practice and are not considered a burden for this analysis.

Thus, the total annual response burden associated with the testing of oral fluid specimens by the laboratories and IITFs is estimated to be 13,267 hours (that is, the sum of the total hours from the above tables). The estimated burden hours were also decreased for testing of urine specimens by laboratories, as described in the UrMG. The final estimate after adjusting the total 1,686,483 hours currently approved by OMB under control number 0930–0158 is 1,684,363 hours, reflecting the decrease in burden hours required to perform the tasks outlined in these updated mandatory guidelines. The Department requests comments on the change in burden hours.

As required by section 3507(d) of the Paperwork Reduction Act, the Secretary has submitted a copy of these proposed Guidelines to OMB for its review.

OMB is required to make a decision concerning the collection of information contained in these proposed Guidelines between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to HHS on the proposed Guidelines.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW, Washington, DC 20502, Attn: Desk Officer for SAMHSA. Because of delays in receipt of mail, comments may also be sent to 202–395–6974 (fax).

Robert F. Kennedy, Jr.,
Secretary.

For the reasons discussed above, the Department of Health and Human

Services proposes to amend the Mandatory Guideline to read as follows:

Mandatory Guidelines For Federal Workplace Drug Testing Programs Using Oral Fluid

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Subpart A—Applicability

Section 1.1 To whom do these Guidelines apply?

- (a) These Guidelines apply to:
- (1) Executive agencies as defined in 5 U.S.C. 105;
 - (2) The Uniformed Services, as defined in 5 U.S.C. 2101(3), but excluding the Armed Forces as defined in 5 U.S.C. 2101(2);
 - (3) Any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches; and
 - (4) The Intelligence Community, as defined by Executive Order 12333, is subject to these Guidelines only to the extent agreed to by the head of the affected agency;
 - (5) Laboratories that provide drug testing services to the Federal agencies;
 - (6) Collectors who provide specimen collection services to the Federal agencies; and
 - (7) Medical Review Officers (MROs) who provide drug testing review and interpretation of results services to the Federal agencies.

(b) These Guidelines do not apply to drug testing under authority other than Executive Order 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

Section 1.2 Who is responsible for developing and implementing these Guidelines?

(a) Executive Order 12564 and Public Law 100–71 require the Department of Health and Human Services (HHS) to establish scientific and technical guidelines for Federal workplace drug testing programs.

(b) The Secretary has the responsibility to implement these Guidelines.

Section 1.3 How does a Federal agency request a change from these Guidelines?

(a) Each Federal agency must ensure that its workplace drug testing program

complies with the provisions of these Guidelines unless a waiver has been obtained from the Secretary.

(b) To obtain a waiver, a federal agency must submit a written request to the Secretary that describes the specific change for which a waiver is sought and a detailed justification for the change.

Section 1.4 How are these Guidelines revised?

(a) To ensure the full reliability and accuracy of specimen tests, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology.

(b) Revisions to these Guidelines will be published in final as a notification in the **Federal Register**.

Section 1.5 What do the terms used in these Guidelines mean?

The following definitions are adopted:

Accessioner. The individual who signs the Federal Drug Testing Custody and Control Form at the time of specimen receipt at the HHS-certified laboratory or (for urine) the HHS-certified IITF.

Adulterated Specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or shows an abnormal concentration of a normal constituent (e.g., nitrite in urine).

Aliquot. A portion of a specimen used for testing.

Alternate Responsible Person. The person who assumes professional, organizational, educational, and administrative responsibility for the day-to-day management of the HHS-certified laboratory when the RP is unable to fulfill these obligations.

Alternate Technology Initial Drug Test. An initial drug test using technology other than immunoassay to differentiate negative specimens from those requiring further testing.

Batch. A number of specimens or aliquots handled concurrently as a group.

Biomarker. An endogenous substance used to validate a biological specimen.

Biomarker Testing Panel. The panel published in the **Federal Register** that includes the biomarkers authorized for testing, with analytes and cutoffs for initial and confirmatory biomarker tests, as described under Section 3.5.

Blind Sample. A sample submitted to an HHS-certified test facility for quality assurance purposes, with a fictitious identifier, so that the test facility cannot distinguish it from a donor specimen.

Calibrator. A sample of known content and analyte concentration prepared in the appropriate matrix used to define expected outcomes of a testing procedure. The test result of the calibrator is verified to be within established limits prior to use.

Cancelled Test. The result reported by the MRO to the Federal agency when a specimen has been reported to the MRO as an invalid result (and the donor has no legitimate explanation) or the specimen has been rejected for testing, when a split specimen fails to reconfirm, or when the MRO determines that a fatal flaw or unrecovered correctable flaw exists in the forensic records (as described in Sections 15.1 and 15.2).

Carryover. The effect that occurs when a sample result (e.g., drug concentration) is affected by a preceding sample during the preparation or analysis of a sample.

Certifying Scientist (CS). The individual responsible for verifying the chain of custody and scientific reliability of a test result reported by an HHS-certified laboratory.

Certifying Technician (CT). The individual responsible for verifying the chain of custody and scientific reliability of negative, rejected for testing, and (for urine) negative/dilute results reported by an HHS-certified laboratory or (for urine) an HHS-certified IITF.

Chain of Custody (COC) Procedures. Procedures that document the integrity of each specimen or aliquot from the point of collection to final disposition.

Chain of Custody Documents. Forms used to document the control and security of the specimen and all aliquots. The document may account for an individual specimen, aliquot, or batch of specimens/aliquots and must include the name and signature of each individual who handled the specimen(s) or aliquot(s) and the date and purpose of the handling.

Collection Device. A product that is used to collect an oral fluid specimen and may include a buffer or diluent.

Collection Site. The location where specimens are collected.

Collector. A person trained to instruct and assist a donor in providing a specimen.

Confirmatory Drug Test. A second analytical procedure performed on a separate aliquot of a specimen to identify and quantify a specific drug or drug metabolite.

Confirmatory Specimen Validity Test. A second test performed on a separate aliquot of a specimen to further support an initial specimen validity test result.

Control. A sample used to evaluate whether an analytical procedure or test is operating within predefined tolerance limits.

Cutoff. The analytical value (e.g., drug, drug metabolite, or biomarker concentration) used as the decision point to determine a result (e.g., negative, positive, adulterated, invalid, or substituted) or the need for further testing.

Donor. The individual from whom a specimen is collected.

Drug Testing Panel. The panel published in the **Federal Register** that includes the drugs authorized for testing, with analytes and cutoffs for initial and confirmatory drug tests, as described under Section 3.5.

External Service Provider. An independent entity that performs services related to federal workplace drug testing on behalf of a federal agency, a collector/collection site, an HHS-certified laboratory, a MRO, or (for urine) an HHS-certified Instrumented Initial Test Facility (IITF).

Failed to Reconfirm. The result reported for a split (B) specimen when a second HHS-certified laboratory is unable to corroborate the result reported for the primary (A) specimen.

Federal Drug Testing Custody and Control Form (Federal CCF). The OMB approved form that is used to document the collection and chain of custody of a specimen from the time the specimen is collected until it is received by the test facility (i.e., HHS-certified laboratory or, for urine, HHS-certified IITF). It may be a paper (hardcopy), electronic (digital), or combination electronic and paper format (hybrid). The form may also be used to report the test result to the Medical Review Officer.

HHS. The Department of Health and Human Services.

Initial Drug Test. An analysis used to differentiate negative specimens from those requiring further testing.

Initial Specimen Validity Test. The first analysis is used to determine if a specimen is adulterated, invalid, substituted, or (for urine) dilute.

Instrumented Initial Test Facility (IITF). A permanent location where (for urine) initial testing, reporting of results, and recordkeeping are performed under the supervision of a responsible technician.

Invalid Result. The result reported by an HHS-certified laboratory in accordance with the criteria established in Section 3.9 when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. A permanent location where drug testing, reporting of results,

and recordkeeping are performed under the supervision of a responsible person. In addition to certifying laboratories that conduct all required testing of primary (A) and split (B) specimens, HHS may certify a laboratory that tests split (B) specimens only and/or conducts additional drug or specimen validity tests for primary and split specimens in accordance with these Mandatory Guidelines.

Limit of Detection (LOD). The lowest concentration at which the analyte (e.g., drug or drug metabolite) can be identified.

Limit of Quantification (LOQ). For quantitative assays, the lowest concentration at which the identity and concentration of the analyte (e.g., drug or drug metabolite) can be accurately established.

Lot. A number of units of an item (e.g., reagents, quality control material, oral fluid collection device) manufactured from the same starting materials within a specified period of time for which the manufacturer ensures that the items have essentially the same performance characteristics and expiration date.

Medical Review Officer (MRO). A licensed physician who reviews, verifies, and reports a specimen test result to the federal agency.

Negative Result. The result reported by an HHS-certified laboratory or (for urine) an HHS-certified IITF when a specimen does not contain the analyte of interest (i.e., drug and/or drug metabolite) or the concentration is less than the cutoff for the test.

Oral Fluid Specimen. An oral fluid specimen is collected from the donor's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands.

Oxidizing Adulterant. A substance that acts alone or in combination with other substances to oxidize drug or drug metabolites to prevent the detection of the drugs or drug metabolites or affects the reagents in either the initial or confirmatory drug test.

Performance Testing (PT) Sample. A program-generated sample sent to a laboratory or (for urine) to an IITF to evaluate performance.

Positive Result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the confirmatory test cutoff.

Reconfirmed. The result reported for a split (B) specimen when the second HHS-certified laboratory corroborates the original result reported for the primary (A) specimen.

Rejected for Testing. The result reported by an HHS-certified laboratory

or (for urine) HHS-certified IITF when no tests are performed on a specimen because of a fatal flaw or an unrecovered correctable error (see Sections 15.1 and 15.2).

Responsible Person (RP). The person who assumes professional, organizational, educational, and administrative responsibility for the day-to-day management of an HHS-certified laboratory.

Sample. A performance testing sample, calibrator or control used during testing, or a representative portion of a donor's specimen.

Secretary. The Secretary of the U.S. Department of Health and Human Services.

Specimen. Fluid or material collected from a donor at the collection site for the purpose of a drug test.

Split Specimen Collection (for Oral Fluid). A collection in which two specimens (primary [A] and split [B]) are collected, concurrently or serially, and independently sealed in the presence of the donor; or a collection in which a single specimen is collected using a single collection device and is subdivided into a primary (A) specimen and a split (B) specimen, which are independently sealed in the presence of the donor.

Standard. Reference material of known purity or a solution containing a reference material at a known concentration.

Substituted Specimen. A specimen that has been submitted in place of the donor's specimen, as evidenced by the absence of a biomarker or a biomarker concentration inconsistent with that established for a human specimen based on testing for an HHS-authorized biomarker or (for urine) creatinine and specific gravity values that are outside the physiologically producible ranges of human urine, in accordance with the criteria to report a urine specimen as substituted in the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG).

Undiluted (neat) Oral Fluid. An oral fluid specimen to which no other solid or liquid has been added. For example, see Section 2.4: a collection device that uses a diluent (or other component, process, or method that modifies the volume of the testable specimen) must collect at least 1 mL of undiluted (neat) oral fluid.

Section 1.6 What is an agency required to do to protect workplace drug testing records?

Consistent with 5 U.S.C. 552a and 48 CFR 24.101 through 24.104, all agency contracts with laboratories, collectors, and MROs must require that they

comply with the Privacy Act, 5 U.S.C. 552a. In addition, the contracts must require compliance with employee access and confidentiality provisions of section 503 of Public Law 100–71. Each Federal agency must establish a Privacy Act System of Records or modify an existing system or use any applicable Government-wide system of records to cover the records of workplace drug test results. All contracts and the Privacy Act System of Records must specifically require that workplace drug testing records be maintained and used with the highest regard for individual privacy.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (Rule), 45 CFR parts 160 and 164, subparts A and E, may be applicable to certain health care providers with whom a federal agency may contract. If a health care provider is a HIPAA covered entity, the provider must protect the individually identifiable health information it maintains in accordance with the requirements of the Rule, which includes not using or disclosing the information except as permitted by the Rule and ensuring there are reasonable safeguards in place to protect the privacy of the information.

Section 1.7 What is a refusal to take a federally regulated drug test?

(a) A donor for a federally regulated drug test, has refused to take a federally regulated drug test when he/she:

(1) Fails to appear for any test within a reasonable time, as determined by the Federal agency, consistent with applicable agency regulations, after being directed to do so by the Federal agency;

(2) Fails to remain at the collection site until the collection process is complete;

(3) Fails to provide a specimen (e.g., oral fluid or another authorized specimen type) for any drug test required by these Guidelines or Federal agency regulations;

(4) Fails to provide a sufficient amount of oral fluid when directed, and it has been determined, through a required medical evaluation, that there was no legitimate medical explanation for the failure as determined by the process described in Section 13.6;

(5) Fails or declines to participate in an alternate specimen collection (e.g., urine) as directed by the Federal agency or collector (i.e., as described in Section 8.6);

(6) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process (i.e., Section 13.6) or as directed

by the Federal agency. In the case of a Federal agency applicant/pre-employment drug test, the donor is deemed to have refused to test on this basis only if the Federal agency applicant/pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;

(7) Fails to cooperate with any part of the testing process (e.g., disrupts the collection process, fails to rinse the mouth or wash hands after being directed to do so by the collector, refuses to provide a split specimen, does not consent to testing or withdraws consent for testing);

(8) Brings materials to the collection site for the purpose of adulterating, substituting, or diluting the specimen;

(9) Attempts to adulterate, substitute, or dilute the specimen;

(10) Admits to the collector or MRO that he/she has adulterated or substituted the specimen;

Section 1.8 *What are the potential consequences for refusing to take a federally regulated drug test?*

(a) A refusal to take a test may result in the initiation of disciplinary or adverse action for a federal employee, up to and including removal from Federal employment. An applicant's refusal to take a pre-employment test may result in non-selection for Federal employment.

(b) When a donor has refused to participate in a part of the collection process, including failing to appear at a reasonable time for any test, the collector must terminate the collection process and take action as described in Section 8.9. Required action includes immediately notifying the federal agency's designated representative by any means (e.g., telephone, email, or secure facsimile [fax] machine) that ensures that the refusal notification is immediately received and, if a Federal CCF has been initiated, documenting the refusal on the Federal CCF, signing and dating the Federal CCF, and sending all copies of the Federal CCF to the Federal agency's designated representative.

(c) When documenting a refusal to test during the verification process as described in Sections 13.4, 13.5, and 13.6, the MRO must complete the MRO copy of the Federal CCF to include:

- (1) Checking the refusal to test box;
- (2) Providing a reason for the refusal in the remarks line; and
- (3) Signing and dating the MRO copy of the Federal CCF.

Subpart B—Oral Fluid Specimens

Section 2.1 *What type of specimen may be collected?*

A federal agency may collect oral fluid and/or an alternate specimen type for its workplace drug testing program. Only specimen types authorized by Mandatory Guidelines for Federal Workplace Drug Testing Programs may be collected. An agency using oral fluid must follow these Guidelines.

Section 2.2 *Under what circumstances may an oral fluid specimen be collected?*

A Federal agency may collect an oral fluid specimen for the following reasons:

- (a) Pre-employment test (i.e., for all applicants including Federal agency employees);
- (b) Random test;
- (c) Reasonable suspicion/cause test;
- (d) Post-accident test;
- (e) Return to duty test; or
- (f) Follow-up test.

Section 2.3 *How is each oral fluid specimen collected?*

Each oral fluid specimen is collected as a split specimen (i.e., collected either simultaneously or serially) as described in Sections 2.5 and 8.8.

Section 2.4 *What volume of oral fluid is collected?*

A volume of at least 1 mL of undiluted (neat) oral fluid for each oral fluid specimen (designated "Tube A" and "Tube B") is collected using a collection device. If the device does not include a diluent (or other component, process, or method that modifies the volume of the testable specimen), the A and B tubes must have a volume marking clearly noting a level of 1 mL.

Section 2.5 *How is the split oral fluid specimen collected?*

The collector collects at least 1 mL of undiluted (neat) oral fluid in a collection device designated as "A" (primary) and at least 1 mL of undiluted (neat) oral fluid in a collection device designated as "B" (split) either simultaneously or serially (i.e., using two devices or using one device and subdividing the specimen), as described in Section 8.8.

Section 2.6 *When may an entity or individual release an oral fluid specimen?*

Entities and individuals subject to these Guidelines under Section 1.1 may not release specimens collected pursuant to Executive Order 12564, Public Law 100-71, and these

Guidelines to donors or their designees. Specimens also may not be released to any other entity or individual unless expressly authorized by these Guidelines or by applicable Federal law. This section does not prohibit a donor's request to have a split (B) specimen tested in accordance with Section 13.9.

Subpart C—Oral Fluid Specimen Tests

Section 3.1 *Which tests are conducted on an oral fluid specimen?*

A Federal agency:

(a) Must ensure that each specimen is tested for marijuana and cocaine as provided in the drug testing panel described under Section 3.5;

(b) Is authorized to test each specimen for other Schedule I or II drugs as provided in the drug testing panel;

(c) Is authorized upon a Medical Review Officer's request to test an oral fluid specimen to determine specimen validity using, for example, a test for a specific adulterant;

(d) Is authorized to test each specimen for one or more HHS-authorized biomarkers; and

(e) May perform additional testing if a specimen exhibits abnormal characteristics (e.g., unusual odor or color, semi-solid characteristics), causes reactions or responses characteristic of an adulterant during initial or confirmatory drug tests (e.g., non-recovery of internal standard, unusual response), or contains an unidentified substance that interferes with the confirmatory analysis.

Section 3.2 *May a specimen be tested for drugs other than those in the drug testing panel?*

A Federal agency covered by these Guidelines may test their workplace specimens for the drugs listed in the drug testing panel and any other drugs listed in Schedule I or II of the Controlled Substances Act subject to the procedures listed in paragraphs (a) and (b) of this section.

(a) A Federal agency may test a reasonable suspicion or post-accident specimen for additional Schedule I or II drugs not listed in the drug testing panel on a case-by-case basis. The agency must request the HHS-certified laboratory to test for the additional drug, include a justification to test a specific specimen for the drug, and ensure that the HHS-certified laboratory has the capability to test for the drug and has established properly validated initial and confirmatory analytical methods. If an initial test procedure is not available upon request for a suspected Schedule I or Schedule II drug, the Federal agency can request an HHS-certified laboratory

to test for the drug by analyzing two separate aliquots of the specimen in two separate testing batches using the confirmatory analytical method. Additionally, the split (B) specimen will be available for testing if the donor requests a retest at another HHS-certified laboratory.

(b) A Federal agency must petition the Secretary in writing for approval to routinely test for any drug not listed in the drug testing panel described under Section 3.5. Such approval must be limited to the use of appropriate science and technology and must not otherwise limit agency discretion to test for any drug tested under Section 3.2(a).

Section 3.3 May a specimen be tested for biomarkers other than those in the biomarker testing panel?

An HHS-certified laboratory or (for urine) IITF must obtain authorization from the Department before implementing a biomarker test for Federal agency drug testing specimens. The Department may add the biomarker (*i.e.*, initial, and confirmatory test analytes and cutoffs) to the subsequent biomarker testing panel published in the **Federal Register**.

A Federal agency covered by these Guidelines may test their workplace specimens for any HHS-authorized biomarker routinely (see Section 3.1.d) or on a case-by-case basis (see Section 3.6).

Section 3.4 May any of the specimens be used for other purposes?

(a) Specimens collected pursuant to Executive Order 12564, Public Law 100–71, and these Guidelines must only be tested for drugs and to determine their validity in accordance with subpart C of these Guidelines. Use of specimens by donors, their designees, or any other entity, for other purposes (*e.g.*, deoxyribonucleic acid, DNA, testing) is prohibited unless authorized in accordance with applicable Federal law.

(b) These Guidelines are not intended to prohibit a federal agency specifically authorized by law to test a specimen for additional drugs in its workplace drug testing program.

Section 3.5 What are the drug and biomarker test analytes and cutoffs for undiluted (neat) oral fluid?

The Secretary publishes the drug and biomarker test analytes and cutoffs (*i.e.*, the “drug testing panel” and “biomarker testing panel”) for initial and confirmatory drug and biomarker tests in the **Federal Register**.

(a) The drug testing panel includes drugs authorized for testing in federal

workplace drug testing programs, with the required test analytes and cutoffs.

(b) The biomarker testing panel includes biomarkers authorized for testing in federal workplace drug testing programs, with the required test analytes and cutoffs.

(c) HHS-certified laboratories and Medical Review Officers must use the nomenclature (*i.e.*, analyte names and abbreviations) published in the **Federal Register** with the drug and biomarker testing panels to report federal workplace drug test results.

Section 3.6 May an HHS-certified laboratory perform additional drug and/or specimen validity tests on a specimen at the request of the Medical Review Officer (MRO)?

An HHS-certified laboratory is authorized to perform additional drug and/or specimen validity tests on a case-by-case basis as necessary to provide information that the MRO would use to report a verified drug test result (*e.g.*, specimen validity tests). An HHS-certified laboratory is not authorized to routinely perform additional drug and/or specimen validity tests at the request of an MRO without prior authorization from the Secretary or designated HHS representative, with the exception of the determination of d,l stereoisomers of amphetamine and methamphetamine. All tests must meet appropriate validation and quality control requirements in accordance with these Guidelines.

Section 3.7 What criteria are used to report an oral fluid specimen as adulterated?

An HHS-certified laboratory reports a primary (A) specimen as adulterated when the presence of an adulterant is verified using an initial test on the first aliquot and a different confirmatory test on the second aliquot.

Section 3.8 What criteria are used to report an oral fluid specimen as substituted?

An HHS-certified laboratory reports a primary (A) oral fluid specimen as substituted when a biomarker is not detected or is present at a concentration inconsistent with that established for human oral fluid for both the initial (first) test and the confirmatory (second) test on two separate aliquots (*i.e.*, using the HHS-authorized test analytes and cutoffs).

Section 3.9 What criteria are used to report an invalid result for an oral fluid specimen?

An HHS-certified laboratory reports a primary (A) oral fluid specimen as an invalid result when:

(a) Interference occurs on the initial drug tests on two separate aliquots (*i.e.*, valid initial drug test results cannot be obtained);

(b) Interference with the confirmatory drug test occurs on two separate aliquots of the specimen and the laboratory is unable to identify the interfering substance;

(c) The physical appearance of the specimen (*e.g.*, viscosity) is such that testing the specimen may damage the laboratory's instruments;

(d) The specimen has been tested, and the appearances of the primary (A) and the split (B) specimens (*e.g.*, color) are clearly different; or

(e) A specimen validity test on two separate aliquots of the specimen indicates that the specimen is not valid for testing.

Subpart D—Collectors

Section 4.1 Who may collect an oral fluid specimen?

(a) A collector who has been trained to collect oral fluid specimens in accordance with these Guidelines and the manufacturer's procedures for the collection device.

(b) The immediate supervisor of a federal employee may only collect that employee's specimen when no other collector is available. The supervisor must be a trained collector.

(c) The hiring official of an applicant may only collect that applicant's specimen when no other collector is available. The hiring official must be a trained collector.

Section 4.2 Who may not collect a specimen?

(a) A Federal agency employee who is in a testing designated position and subject to the Federal agency drug testing rules must not be a collector for co-workers in the same testing pool or who work with that employee on a daily basis.

(b) A donor must not collect their own drug testing specimen.

(c) An employee working for an HHS-certified laboratory must not act as a collector if the employee could link the identity of the donor to the donor's drug test result.

(d) To avoid a potential conflict of interest, a collector must not be related to the donor (*e.g.*, spouse, ex-spouse, relative) or be a personal friend of the donor (*e.g.*, fiancée).

Section 4.3 What are the requirements to be a collector?

(a) An individual may serve as a collector if they fulfill the following conditions:

(1) Is knowledgeable about the collection procedure described in these Guidelines;

(2) Is knowledgeable about any guidance provided by the federal agency's drug-free workplace program and additional information provided by the Secretary relating to the collection procedure described in these Guidelines;

(3) Is trained and qualified to use the specific oral fluid collection device. Training must include the following:

(i) All steps necessary to complete an oral fluid collection;

(ii) Completion and distribution of the federal CCF;

(iii) Problem collections;

(iv) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(v) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of the donor, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) Has demonstrated proficiency in collections by completing five consecutive error-free mock collections.

(i) The five mock collections must include two uneventful collection scenarios, one insufficient specimen quantity scenario, one scenario in which the donor refuses to sign the federal CCF, and one scenario in which the donor refuses to initial the specimen tube tamper-evident seal.

(ii) A qualified trainer for collectors must monitor and evaluate the individual being trained in person or by a means that provides real-time observation and interaction between the trainer and the trainee, and the trainer must attest in writing that the mock collections are error-free.

(b) A trained collector must complete refresher training at least every five years that includes the requirements in Section 4.3(a).

(c) The collector must maintain the documentation of their training and provide that documentation to a federal agency when requested.

(d) An individual may not collect specimens for a federal agency until the individual's training as a collector has been properly documented.

Section 4.4 What are the requirements to be a trainer for collectors?

(a) Individuals are considered qualified trainers for collectors for a

specific oral fluid collection device and may train others to collect oral fluid specimens using that collection device when they have completed the following:

(1) Qualified as a trained collector and regularly conduct oral fluid drug test collections using that collection device for a period of at least one year or

(2) Completed a "train the trainer" course given by an organization (e.g., manufacturer, private entity, contractor, Federal agency).

(b) A qualified trainer for collectors must complete refresher training at least every five years in accordance with the collector requirements in Section 4.3(a).

(c) A qualified trainer for collectors must maintain the documentation for the trainer's training and provide that documentation to a federal agency when requested.

Section 4.5 What must a federal agency do before a collector is permitted to collect a specimen?

A federal agency must ensure the following:

(a) The collector has satisfied the requirements described in Section 4.3;

(b) The collector, who may be self-employed, or an organization (e.g., third party administrator that provides a collection service, collector training company, federal agency that employs its own collectors) maintains a copy of the training record(s); and

(c) The collector has been provided with the name and telephone number of the federal agency representative.

Subpart E—Collection Sites

Section 5.1 Where can a collection for a drug test take place?

(a) A collection site may be a permanent or temporary facility located either at the work site or at a remote site.

(b) In the event that an agency-designated collection site is not accessible and there is an immediate requirement to collect an oral fluid specimen (e.g., an accident investigation), another site may be used for the collection, providing the collection is performed by a collector who has been trained to collect oral fluid specimens in accordance with these Guidelines and the manufacturer's procedures for the collection device.

Section 5.2 What are the requirements for a collection site?

The facility used as a collection site must have the following:

(a) Provisions to ensure donor privacy during the collection (as described in Section 8.1);

(b) A suitable and clean surface area that is not accessible to the donor for handling the specimens and completing the required paperwork;

(c) A secure temporary storage area to maintain specimens until the specimen is transferred to an HHS-certified laboratory;

(d) A restricted access area where only authorized personnel may be present during the collection;

(e) A restricted access area for the storage of collection supplies; and

(f) A restricted access area for the secure storage of records.

Section 5.3 Where must collection site records be stored?

Collection site records must be stored at a secure site designated by the collector or the collector's employer.

Section 5.4 How long must collection site records be stored?

Collection site records (e.g., collector copies of the OMB-approved federal CCF) must be stored securely for a minimum of 2 years. The collection site may convert hardcopy records to electronic records for storage and discard the hardcopy records after 6 months.

Section 5.5 How does the collector ensure the security and integrity of a specimen at the collection site?

(a) A collector must do the following to maintain the security and integrity of a specimen:

(1) Not allow unauthorized personnel to enter the collection area during the collection procedure;

(2) Perform only one donor collection at a time;

(3) Restrict access to collection supplies before, during, and after collection;

(4) Ensure that only the collector and the donor are allowed to handle the unsealed specimen;

(5) Ensure the chain of custody process is maintained and documented throughout the entire collection, storage, and transport procedures;

(6) Ensure that the federal CCF is completed and distributed as required; and

(7) Ensure that specimens transported to an HHS-certified laboratory are sealed and placed in transport containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes, padded mailers, or other suitable shipping containers), and those containers are securely sealed to eliminate the possibility of undetected tampering;

(b) Couriers, express carriers, and postal service personnel are not

required to document chain of custody since specimens are sealed in packages that would indicate tampering during transit to the HHS-certified laboratory.

Section 5.6 What are the privacy requirements when collecting an oral fluid specimen?

Collections must be performed at a site that provides reasonable privacy (as described in Section 8.1).

Subpart F—Federal Drug Testing Custody and Control Form

Section 6.1 What federal form is used to document custody and control?

The OMB-approved Federal CCF must be used to document custody and control of each specimen at the collection site.

Section 6.2 What happens if the correct OMB-approved federal CCF is not available or is not used?

(a) The use of a non-federal CCF or an expired federal CCF is not, by itself, a reason for the HHS-certified laboratory to automatically reject the specimen for testing or for the MRO to cancel the test.

(b) If the collector does not use the correct OMB-approved federal CCF, the collector must document that it is a federal agency specimen collection and provide the reason that the incorrect form was used. Based on the information provided by the collector, the HHS-certified laboratory must handle and test the specimen as a federal agency specimen.

(c) If the HHS-certified laboratory or MRO discovers that the collector used an incorrect form, the laboratory or MRO must obtain a memorandum for the record from the collector describing the reason the incorrect form was used. If a memorandum for the record cannot be obtained, the laboratory reports a rejected for testing result to the MRO and the MRO cancels the test. The HHS-certified laboratory must wait at least 5 business days while attempting to obtain the memorandum before reporting a rejected for testing result to the MRO.

Subpart G—Oral Fluid Specimen Collection Devices

Section 7.1 What is used to collect an oral fluid specimen?

A single-use collection device intended to collect an oral fluid specimen must be used. This collection device must maintain the integrity of such specimens during storage and transport so that the specimen contained therein can be tested in an HHS-certified laboratory for the presence of drugs or their metabolites.

Section 7.2 What are the requirements for an oral fluid collection device?

An oral fluid specimen collection device must provide:

(a) An indicator that demonstrates the adequacy of the volume of oral fluid specimen collected;

(b) One or two sealable, non-leaking tubes [depending on the device type, as described in Section 8.8(a)] that:

(1) maintain the integrity of the specimen during storage and transport so that the specimen contained therein can be tested in an HHS-certified laboratory for the presence of drugs or their metabolites,

(2) are sufficiently transparent (e.g., translucent) to enable a visual assessment of the contents (i.e., oral fluid, buffer/diluent, collection pad) for identification of abnormal physical characteristics without opening the tube, and

(3) include the device lot expiration date on each specimen tube (i.e., the expiration date of the buffer/diluent or, for devices without a buffer/diluent, the earliest expiration date of any device component);

(c) Components that ensure pre-analytical drug and drug metabolite stability; and

(d) Components that do not substantially affect the composition of drugs and/or drug metabolites in the oral fluid specimen.

Section 7.3 What are the minimum performance requirements for a collection device?

An oral fluid collection device must meet the following minimum performance requirements.

(a) Reliable collection of a minimum of 1 mL of undiluted (neat) oral fluid;

(b) If the collection device contains a diluent (or other component, process, or method that modifies the volume of the testable specimen):

(1) The volume of oral fluid collected should be at least 1.0 mL $\pm$ 10 percent, and

(2) The volume of diluent in the device should be within $\pm$ 2.5 percent of the diluent target volume;

(c) Stability (recoverable concentrations $\geq$ 80 percent of the concentration at the time of collection) of the drugs and/or drug metabolites for five days at room temperature (64–77 °F/ 18–25 °C) and under the manufacturer's intended shipping and storage conditions; and

(d) Recover $\geq$ 80 percent (but no more than 120 percent) of drug and/or drug metabolite in the undiluted (neat) oral fluid at (or near) the initial test cutoff listed in the drug testing panel.

Subpart H—Oral Fluid Specimen Collection Procedure

Section 8.1 What privacy must the donor be given when providing an oral fluid specimen?

The following privacy requirements apply when a donor is providing an oral fluid specimen:

(a) Only authorized personnel and the donor may be present in the restricted access area where the collection takes place.

(b) The collector is not required to be the same sex as the donor.

Section 8.2 What must the collector ensure at the collection site before starting an oral fluid specimen collection?

The collector must take all reasonable steps to prevent the adulteration or substitution of an oral fluid specimen at the collection site.

Section 8.3 What are the preliminary steps in the oral fluid specimen collection procedure?

The collector must take the following steps before beginning an oral fluid specimen collection:

(a) If a donor fails to arrive at the collection site at the assigned time, the collector must follow the Federal agency policy or contact the federal agency representative to obtain guidance on action to be taken.

(b) When the donor arrives at the collection site, the collector should begin the collection procedure without undue delay. For example, the collection should not be delayed because an authorized employer or employer representative is late in arriving.

(c) The collector requests the donor to present photo identification (e.g., driver's license; employee badge issued by the employer; an alternative photo identification issued by a Federal, state, or local government agency). If the donor does not have proper photo identification, the collector shall contact the supervisor of the donor or the federal agency representative who can positively identify the donor. If the donor's identity cannot be established, the collector must not proceed with the collection.

(d) The collector must provide identification (e.g., employee badge, employee list) if requested by the donor.

(e) The collector asks the donor to remove any unnecessary outer garments (e.g., coat, jacket) that might conceal items or substances that could be used to adulterate or substitute the oral fluid specimen. The collector must ensure that all personal belongings (e.g., purse

or briefcase) remain with the outer garments. The donor may retain the donor's wallet. The donor is not required to remove any items worn for faith-based or disability reasons.

(f) If the donor remains under the collector's direct observation until the end of the collection, including the 10-minute wait period described in Section 8.3(h), the collector proceeds to Section 8.3(g). If the collector will not keep the donor under direct observation from this point until the end of the collection, the collector asks the donor to empty the donor's pockets and display the contents to ensure no items are present that could be used to adulterate or substitute the specimen.

(1) If no items are present that can be used to adulterate or substitute the specimen, the collector instructs the donor to return the items to their pockets and continues the collection procedure.

(2) If an item is present whose purpose is to adulterate or substitute the specimen (e.g., a commercial drug culture product or other substance for which the donor has no reasonable explanation), this is considered a refusal to test. The collector must stop the collection and report the refusal to test as described in Section 8.9.

(3) If an item that could be used to adulterate or substitute the specimen (e.g., common personal care products such as mouthwash, lozenges, capsules) appears to have been inadvertently brought to the collection site, the collector must secure the item and continue with the normal collection procedure.

(4) If the donor refuses to show the collector the items in their pockets, the collector must keep the donor under direct observation until the end of the oral fluid collection.

(g) The collector requests that the donor open the donor's mouth, and the collector inspects the oral cavity to ensure that it is free of any items (e.g., candy, gum, food, tobacco) that could impede or interfere with the collection of an oral fluid specimen or items that could be used to adulterate, substitute, or dilute the specimen.

(1) If an item is present whose purpose is to adulterate or substitute the specimen (e.g., a commercial drug culture product or other item for which the donor has no reasonable explanation), this is considered a refusal to test. The collector must stop the collection and report the refusal to test as described in Section 8.9.

(2) If an item is present that could impede or interfere with the collection of an oral fluid specimen (including abnormally colored saliva), or the donor

claims to have "dry mouth," the collector gives the donor water (e.g., up to 4 oz.) to rinse their mouth. The donor may drink the water. If the donor refuses to remove the item or refuses to rinse, this is a refusal to test.

(3) If the donor claims that they have a medical condition that prevents opening their mouth for inspection, the collector follows the procedure in Section 8.6(b)(2).

(h) The collector must initiate a 10-minute wait period prior to collecting the specimen. During these 10 minutes, the collector must:

(1) Explain the basic collection procedure to the donor;

(2) Provide the instructions for completing the federal CCF for the donor's review and informs the donor that these instructions and the collection device-specific instructions are available upon request.

(3) Answer any reasonable and appropriate questions the donor may have regarding the collection procedure; and

(4) Inform the donor that they must remain at the collection site (i.e., in the area designated by the collector) during the wait period, and that failure to follow these instructions will be reported as a refusal to test.

Section 8.4 What steps does the collector take in the collection procedure before the donor provides an oral fluid specimen?

(a) The collector shall instruct the donor to wash and dry the donor's hands under the collector's observation, and to keep their hands within view and avoid touching items or surfaces after handwashing. If the donor refuses to wash their hands when instructed by the collector, this is a refusal to test.

(b) The collector will provide or the donor may select the specimen collection device(s) to be used for the collection. The device(s) must be clean, unused, wrapped/sealed in original packaging, and compliant with Subpart G of these Guidelines; and must be within the manufacturer's expiration date printed on the specimen tube. See Section 8.8(a) for types of specimen collection devices used for oral fluid split specimen collections.

(1) The collector will open the package in view of the donor.

(2) Both the collector and the donor must keep the unwrapped collection devices in view at all times until each collection device containing the donor's oral fluid specimen has been sealed and labeled.

(c) The collector verifies that each device is within the manufacturer's

expiration date and documents this action on the Federal CCF.

(d) The collector reviews with the donor the procedures required for a successful oral fluid specimen collection as stated in the manufacturer's instructions for the specimen collection device.

(e) The collector notes any unusual behavior or appearance of the donor on the federal CCF. If the collector detects any conduct that clearly indicates an attempt to tamper with a specimen (e.g., an attempt to prevent the device from collecting sufficient oral fluid; an attempt to bring into the collection site an adulterant or oral fluid substitute), the collector must report a refusal to test in accordance with Section 8.9.

Section 8.5 What steps does the collector take during and after the oral fluid specimen collection procedure?

Integrity and Identity of the Specimen. The collector must take the following steps during and after the donor provides the oral fluid specimen:

(a) The collector shall be present and maintain visual contact with the donor during the procedures outlined in this section.

(1) Under the observation of the collector, the donor is responsible for positioning the specimen collection device for collection. The collector must ensure the collection is performed correctly and that the collection device is working properly. If there is a failure to collect the specimen, the collector must begin the process again, beginning with Step 8.4(b), using a new specimen collection device (for both A and B specimens) and notes the failed collection attempt on the Federal CCF. If the donor states that they are unable to provide an oral fluid specimen during the collection process or after multiple failures to collect the specimen, the collector follows the procedure in Section 8.6.

(2) The donor and the collector must complete the collection in accordance with the manufacturer instructions for the collection device.

(3) The collector must inspect the specimen to determine if there is any sign indicating that the specimen may not be a valid oral fluid specimen (e.g., unusual color, presence of foreign objects or material), documents any unusual findings on the federal CCF, and takes action (e.g., recollection) to obtain an acceptable specimen.

(b) If the donor fails to remain present through the completion of the collection, fails to follow the instructions for the collection device, refuses to begin the collection process after a failure to collect the specimen as

required in Section 8.5(a)(1), refuses to provide a split specimen as instructed by the collector, or refuses to provide an alternate specimen when directed to do so, the collector stops the collection and reports the refusal to test in accordance with Section 8.9.

Section 8.6 What procedure is used when the donor states that they are unable to provide an oral fluid specimen?

(a) If the donor states that they are unable to provide an oral fluid specimen during the collection process, the collector requests that the donor follow the collector's instructions and attempt to provide an oral fluid specimen.

(b) The donor demonstrates their inability to provide a specimen when, after the time limit specified by the collection device manufacturer, there is insufficient volume or no oral fluid collected using the device.

(1) If the donor states that they could provide a specimen after drinking some fluids, the collector gives the donor a drink (up to 8 ounces) and waits an additional 10 minutes before beginning the specimen collection (a period of 1 hour must be provided or until the donor has provided a sufficient oral fluid specimen). If the donor simply needs more time before attempting to provide an oral fluid specimen, the donor may choose not to drink any fluids during the 1 hour wait time. The collector must inform the donor that the donor must remain at the collection site (*i.e.*, in an area designated by the collector) during the waiting period.

(2) If the donor states that they are unable to provide an oral fluid specimen, the collector records the reason for not collecting an oral fluid specimen on the federal CCF, notifies the Federal agency's designated representative for authorization to collect an alternate specimen, and sends the appropriate copies of the federal CCF to the MRO and to the federal agency's designated representative. The federal agency may choose to provide the collection site with a standard protocol to follow in lieu of requiring the collector to notify the agency's designated representative for authorization in each case. If an alternate specimen is authorized, the collector begins the collection procedure for the alternate specimen (see Section 8.7) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using the alternate specimen.

Section 8.7 If the donor is unable to provide an oral fluid specimen, may another specimen type be collected for testing?

Yes, if the alternate specimen type is authorized by Mandatory Guidelines for Federal Workplace Drug Testing Programs and specifically authorized by the Federal agency.

Section 8.8 How does the collector prepare the oral fluid specimens?

(a) All Federal agency collections are to be split specimen collections. An oral fluid split specimen collection may be:

(1) Two specimens collected simultaneously with two separate collection devices;

(2) Two specimens collected serially with two separate collection devices. The donor is not allowed to drink or rinse their mouth between the two collections. Collection of the second specimen must begin within two minutes after the completion of the first collection and be recorded on the federal CCF;

(3) Two specimens collected simultaneously using a single collection device that directs the oral fluid into two separate collection tubes; or

(4) A single specimen collected using a single collection device, that is subsequently subdivided into two specimens.

(b) A volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Tube A" and a volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Tube B".

(c) In the presence of the donor, the collector places a tamper-evident label/seal from the Federal CCF over the cap of each specimen tube in a manner to ensure that any attempt to access the specimen prior to receipt by the laboratory will be detected. The collector records the date of the collection on the tamper-evident labels/seals.

(d) The collector instructs the donor to initial the tamper-evident labels/seals on each specimen tube. If the donor refuses to initial the labels/seals, the collector notes the refusal on the federal CCF and continues with the collection process.

(e) The collector must ensure that all required information is included in the federal CCF.

(f) The collector asks the donor to read and sign a statement on the federal CCF certifying that the specimens identified were collected from the donor. If the donor refuses to sign the certification statement, the collector

notes the refusal on the federal CCF and continues with the collection process.

(g) The collector signs and prints their name on the federal CCF, completes the federal CCF, and distributes the copies of the federal CCF as required.

(h) The collector seals the specimens (A and B) in a package and, within 24 hours or during the next business day, sends them to the HHS-certified laboratory that will be testing the primary (A) specimen.

(i) If the specimen and federal CCF are not immediately transported to an HHS-certified laboratory, they must remain under direct control of the collector or be appropriately secured under proper specimen storage conditions until transported.

Section 8.9 How does the collector report a donor's refusal to test?

If there is a refusal to test as defined in Section 1.7, the collector stops the collection, discards any oral fluid specimen collected and reports the refusal to test by:

(a) Notifying the federal agency by means (*e.g.*, telephone, email, or secure fax) that ensures that the notification is immediately received,

(b) Documenting the refusal to test including the reason on the federal CCF, and

(c) Sending all copies of the federal CCF to the Federal agency's designated representative.

Section 8.10 What are a federal agency's responsibilities for a collection site?

(a) A federal agency must ensure that collectors and collection sites satisfy all requirements in subparts D, E, F, G, and H of these Guidelines.

(b) A federal agency (or only one Federal agency when several agencies are using the same collection site) must inspect 5 percent or up to a maximum of 50 collection sites each year, selected randomly from those sites used to collect agency specimens (*e.g.*, virtual, onsite, or self-evaluation).

(c) A federal agency must investigate reported collection site deficiencies (*e.g.*, specimens reported "rejected for testing" by an HHS-certified laboratory) and take appropriate action which may include a collection site self-assessment (*i.e.*, using the Collection Site Checklist for the Collection of Oral Fluid Specimens for Federal Agency Workplace Drug Testing Programs) or an inspection of the collection site. The inspections of these additional collection sites may be included in the 5 percent or maximum of 50 collection sites inspected annually.

Subpart I—HHS Certification of Laboratories

Section 9.1 Who has the authority to certify laboratories to test oral fluid specimens for federal agencies?

(a) The Secretary has broad discretion to take appropriate action to ensure the full reliability and accuracy of drug testing and reporting, to resolve problems related to drug testing, and to enforce all standards set forth in these Guidelines. The Secretary has the authority to issue directives to any HHS-certified laboratory, including suspending the use of certain analytical procedures when necessary to protect the integrity of the testing process; ordering any HHS-certified laboratory to undertake corrective actions to respond to material deficiencies identified by an inspection or through performance testing; ordering any HHS-certified laboratory to send specimens or specimen aliquots to another HHS-certified laboratory for retesting when necessary to ensure the accuracy of testing under these Guidelines; ordering the review of results for specimens tested under the Guidelines for private sector clients to the extent necessary to ensure the full reliability of drug testing for federal agencies; and ordering any other action necessary to address deficiencies in drug testing, analysis, specimen collection, chain of custody, reporting of results, or any other aspect of the certification program.

(b) A laboratory is prohibited from stating or implying that it is certified by HHS under these Guidelines to test oral fluid specimens for federal agencies unless it holds such certification.

Section 9.2 What is the process for a laboratory to become HHS-certified?

(a) A laboratory seeking HHS certification must:

- (1) Submit a completed OMB-approved application form (*i.e.*, the applicant laboratory provides detailed information on both the administrative and analytical procedures to be used for federally regulated specimens);
- (2) Have its application reviewed as complete and accepted by HHS;
- (3) Successfully complete the PT challenges in 3 consecutive sets of initial PT samples;
- (4) Satisfy all the requirements for an initial inspection; and
- (5) Receive notification of certification from the Secretary before testing specimens for Federal agencies.

Section 9.3 What is the process for a laboratory to maintain HHS certification?

(a) To maintain HHS certification, a laboratory must:

- (1) Successfully participate in both the maintenance PT and inspection programs (*i.e.*, successfully test the required quarterly sets of maintenance PT samples, undergo an inspection 3 months after being certified, and undergo maintenance inspections at a minimum of every 6 months thereafter);
- (2) Respond in an appropriate, timely, and complete manner to required corrective action requests if deficiencies are identified in the maintenance PT performance, during the inspections, operations, or reporting; and
- (3) Satisfactorily complete corrective remedial actions and undergo special inspection and special PT sets to maintain or restore certification when material deficiencies occur in either the PT program, inspection program, or in operations and reporting.

Section 9.4 What is the process when a laboratory does not maintain its HHS certification?

(a) A laboratory that does not maintain its HHS certification must:

- (1) Stop testing federally regulated specimens;
- (2) Ensure the security of federally regulated specimens and records throughout the required storage period described in Sections 11.18, 11.19, and 14.8;
- (3) Ensure access to federally regulated specimens and records in accordance with Sections 11.21 and 11.22 and subpart P of these Guidelines; and
- (4) Follow the HHS suspension and revocation procedures when imposed by the Secretary, follow the HHS procedures in subpart P of these Guidelines that will be used for all actions associated with the suspension and/or revocation of HHS-certification.

Section 9.5 What are the qualitative and quantitative specifications of performance testing (PT) samples?

(a) PT samples used to evaluate drug tests will be prepared using the following specifications:

- (1) PT samples may contain one or more of the drugs and drug metabolites listed in the drug testing panel and may be sent to the laboratory as undiluted (neat) oral fluid. The PT samples must satisfy one of the following parameters:
 - (i) The concentration of a drug or metabolite will be at least 20 percent above the initial test cutoff for the drug or drug metabolite;

(ii) The concentration of a drug or metabolite may be as low as 40 percent of the confirmatory test cutoff when the PT sample is designated as a retest sample; or

(iii) The concentration of drug or metabolite may differ from Section 9.5(a)(1)(i) and (ii) for a special purpose.

(2) A PT sample may contain an interfering substance, an adulterant, or other substances for special purposes, or may satisfy the criteria for a substituted specimen or invalid result.

(3) A negative PT sample will not contain a measurable amount of a target analyte.

(b) The laboratory must (to the greatest extent possible) handle, test, and report a PT sample in a manner identical to that used for a donor specimen, unless otherwise specified.

Section 9.6 What are the PT requirements for an applicant laboratory that seeks to perform oral fluid testing?

(a) An applicant laboratory that seeks certification under these Guidelines to perform oral fluid testing must satisfy the following criteria on three consecutive sets of PT samples:

- (1) Have no false positive results;
- (2) Correctly identify, confirm, and report at least 90 percent of the total drug challenges over the three sets of PT samples;
- (3) For laboratories that will test primary (A) specimens, correctly identify at least 80 percent of the drug challenges for each initial drug test over the three sets of PT samples;
- (4) For the confirmatory drug tests, correctly determine the concentrations (*i.e.*, no more than ± 20 percent or ± 2 standard deviations [whichever is larger] from the appropriate reference or peer group means) for at least 80 percent of the total drug challenges over the three sets of PT samples;
- (5) For the confirmatory drug tests, do not obtain any drug concentration that differs by more than ± 50 percent from the appropriate reference or peer group mean;
- (6) For each confirmatory drug test, correctly identify and determine the concentrations (*i.e.*, no more than ± 20 percent or ± 2 standard deviations [whichever is larger] from the appropriate reference or peer group means) for at least 50 percent of the drug challenges for an individual drug over the three sets of PT samples;
- (7) Correctly identify at least 80 percent of the total specimen validity testing challenges over the three sets of PT samples;
- (8) Correctly identify at least 80 percent of the challenges for each

individual specimen validity test over the three sets of PT samples;

(9) For quantitative specimen validity tests, obtain quantitative values for at least 80 percent of the total challenges over the three sets of PT samples that satisfy the specified criteria; and

(10) Do not report any PT sample as adulterated with a compound that is not present in the sample or substituted when the appropriate reference or peer group mean for a biomarker is within the acceptable range.

(b) Failure to satisfy these requirements will result in the denial of the laboratory's application for HHS certification to perform oral fluid testing.

Section 9.7 What are the PT requirements for an HHS-certified oral fluid laboratory?

(a) A laboratory certified under these Guidelines to perform oral fluid testing must satisfy the following criteria on the maintenance PT samples:

(1) Have no false positive results;

(2) Correctly identify, confirm, and report at least 90 percent of the total drug challenges over two consecutive PT cycles;

(3) For laboratories that test primary (A) specimens, correctly identify at least 80 percent of the drug challenges for each initial drug test over two consecutive PT cycles;

(4) For the confirmatory drug tests, correctly determine that the concentrations for at least 80 percent of the total drug challenges are no more than ± 20 percent or ± 2 standard deviations (whichever is larger) from the appropriate reference or peer group means over two consecutive PT cycles;

(5) For the confirmatory drug tests, do not obtain any drug concentration that differs by more than ± 50 percent from the appropriate reference or peer group means;

(6) For each confirmatory drug test, correctly identify and determine that the concentrations for at least 50 percent of the drug challenges for an individual drug are no more than ± 20 percent or ± 2 standard deviations (whichever is larger) from the appropriate reference or peer group means over two consecutive PT cycles;

(7) Correctly identify at least 80 percent of the total specimen validity testing challenges over two consecutive PT cycles;

(8) Correctly identify at least 80 percent of the challenges for each individual specimen validity test over two consecutive PT cycles;

(9) For quantitative specimen validity tests, obtain quantitative values for at least 80 percent of the total challenges

over two consecutive PT cycles that satisfy the specified criteria; and

(10) Do not report any PT sample as adulterated with a compound that is not present in the sample or substituted when the appropriate reference or peer group mean for a biomarker is within the acceptable range.

(b) Failure to participate in all PT cycles or to satisfy these requirements may result in suspension or revocation of an HHS-certified laboratory's certification.

Section 9.8 What are the inspection requirements for an applicant laboratory?

(a) An applicant laboratory is inspected by a team of two inspectors.

(b) Each inspector conducts an independent review and evaluation of all aspects of the laboratory's testing procedures and facilities using an inspection checklist.

Section 9.9 What are the maintenance inspection requirements for an HHS-certified laboratory?

(a) An HHS-certified laboratory must undergo an inspection 3 months after becoming certified and at least every 6 months thereafter.

(b) An HHS-certified laboratory is inspected by two or more inspectors. The number of inspectors is determined according to the number of specimens to be reviewed.

(c) Each inspector conducts an independent evaluation and review of the HHS-certified laboratory's procedures, records, and facilities using guidance provided by the Secretary.

(d) To remain certified, an HHS-certified laboratory must continue to satisfy the minimum requirements as stated in these Guidelines.

Section 9.10 Who can inspect an HHS-certified laboratory and when may the inspection be conducted?

(a) An individual may be selected as an inspector for the Secretary if they satisfy the following criteria:

(1) Has experience and an educational background similar to that required for either a responsible person or a certifying scientist for an HHS-certified laboratory as described in subpart K of these Guidelines;

(2) Has read and thoroughly understands the policies and requirements contained in these Guidelines and in other guidance consistent with these Guidelines provided by the Secretary;

(3) Submits a resume and documentation of qualifications to HHS;

(4) Attends approved training; and

(5) Performs acceptably as an inspector on an inspection of an HHS-certified laboratory.

(b) The Secretary or a federal agency may conduct an inspection at any time.

Section 9.11 What happens if an applicant laboratory does not satisfy the minimum requirements for either the PT program or the inspection program?

If an applicant laboratory fails to satisfy the requirements established for the initial certification process, the laboratory must start the certification process from the beginning.

Section 9.12 What happens if an HHS-certified laboratory does not satisfy the minimum requirements for either the PT program or the inspection program?

(a) If an HHS-certified laboratory fails to satisfy the minimum requirements for certification, the laboratory is given a period of time (e.g., 5 or 30 working days depending on the nature of the deficiency) to provide any explanation for its performance and evidence that all deficiencies have been corrected.

(b) A laboratory's HHS certification may be revoked, suspended, or no further action taken depending on the seriousness of the deficiencies and whether there is evidence that the deficiencies have been corrected and that current performance meets the requirements for certification.

(c) An HHS-certified laboratory may be required to undergo a special inspection or to test additional PT samples to address deficiencies.

(d) If an HHS-certified laboratory's certification is revoked or suspended in accordance with the process described in subpart P of these Guidelines, the laboratory is not permitted to test federally regulated specimens until the suspension is lifted or the laboratory has successfully completed the certification requirements as a new applicant laboratory.

Section 9.13 What factors are considered in determining whether revocation of a laboratory's HHS certification is necessary?

(a) The Secretary shall revoke certification of an HHS-certified laboratory in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure fully reliable and accurate drug test results and reports.

(b) The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests (e.g., an HHS-certified

laboratory reporting a false positive result for a drug test);

(2) Unsatisfactory participation in performance testing or inspections;

(3) A material violation of a certification standard, contract term, or other condition imposed on the HHS-certified laboratory by a federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the HHS-certified laboratory; or

(5) Any other cause that materially affects the ability of the HHS-certified laboratory to ensure fully reliable and accurate drug test results and reports.

(c) The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing.

Section 9.14 What factors are considered in determining whether to suspend a laboratory's HHS certification?

(a) The Secretary may immediately suspend (either partially or fully) a laboratory's HHS certification to conduct drug testing for Federal agencies if the Secretary has reason to believe that revocation may be required and that immediate action is necessary to protect the interests of the United States and its employees.

(b) The Secretary shall determine the period and terms of suspension based upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing.

Section 9.15 How does the Secretary notify an HHS-certified laboratory that action is being taken against the laboratory?

(a) When a laboratory's HHS certification is suspended or the Secretary seeks to revoke HHS certification, the Secretary shall immediately serve the HHS-certified laboratory with written notice of the suspension or proposed revocation by fax, mail, personal service, or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30

days of the date the laboratory received the notice, or if expedited review is requested, within 3 days of the date the laboratory received the notice. Subpart P of these Guidelines contains detailed procedures to be followed for an informal review of the suspension or proposed revocation.

(c) A suspension must be effective immediately. A proposed revocation must be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension must terminate immediately, and any proposed revocation shall not take effect.

(d) The Secretary will publish in the **Federal Register** the name, address, and telephone number of any HHS-certified laboratory that has its certification revoked or suspended under Section 9.13 or 9.14, respectively, and the name of any HHS-certified laboratory that has its suspension lifted. The Secretary shall provide any member of the public upon request the written notice provided to a laboratory that has its HHS certification suspended or revoked, as well as the reviewing official's written decision which upholds or denies the suspension or proposed revocation under the procedures of subpart P of these Guidelines.

Section 9.16 May a laboratory that had its HHS certification revoked be recertified to test Federal agency specimens?

Following revocation, a laboratory may apply for recertification. Unless otherwise provided by the Secretary in the notice of revocation under Section 9.15 or the reviewing official's decision under Section 16.9(e) or 16.14(a), a laboratory which has had its certification revoked may reapply for HHS certification as an applicant laboratory.

Section 9.17 Where is the list of HHS-certified laboratories published?

(a) The list of HHS-certified laboratories is published monthly in the **Federal Register**.

(b) An applicant laboratory is not included on the list.

Subpart J—Blind Samples Submitted by an Agency

Section 10.1 What are the requirements for federal agencies to submit blind samples to HHS-certified laboratories?

(a) Each Federal agency is required to submit blind samples for its workplace

drug testing program. The collector must send the blind samples to the HHS-certified laboratory that the collector sends donor specimens.

(b) Each federal agency must submit at least 3 percent blind samples along with its donor specimens based on the projected total number of donor specimens collected per year (up to a maximum of 400 blind samples). Every effort should be made to ensure that blind samples are submitted quarterly.

(c) Approximately 75 percent of the blind samples submitted each year by an agency must be negative and 25 percent must be positive for one or more drugs.

Section 10.2 What are the requirements for blind samples?

(a) Drug positive blind samples must be validated by the supplier in the selected manufacturer's collection device as to their content using appropriate initial and confirmatory tests.

(1) Drug positive blind samples must contain one or more of the drugs or metabolites listed in the drug testing panel.

(2) Drug positive blind samples must contain concentrations of drugs between 1.5 and 2 times the initial drug test cutoff.

(b) Drug negative blind samples (*i.e.*, certified to contain no drugs) must be validated by the supplier in the selected manufacturer's collection device as negative using appropriate initial and confirmatory tests.

(c) The supplier must provide information on the blind samples' content, validation, expected results, and stability to the collection site/collector sending the blind samples to the laboratory, and must provide the information upon request to the MRO, the Federal agency for which the blind sample was submitted, or the Secretary.

Section 10.3 How is a blind sample submitted to an HHS-certified laboratory?

(a) A blind sample must be submitted as a split specimen (specimens A and B) with the current Federal CCF that the HHS-certified laboratory uses for donor specimens. The collector provides the required information to ensure that the federal CCF has been properly completed and provides fictitious initials on the specimen label/seal. The collector must indicate that the specimen is a blind sample on the MRO copy where a donor would normally provide a signature.

(b) A collector should attempt to distribute the required number of blind samples randomly with donor

specimens rather than submitting the full complement of blind samples as a single group.

Section 10.4 *What happens if an inconsistent result is reported for a blind sample?*

If an HHS-certified laboratory reports a result for a blind sample that is inconsistent with the expected result (e.g., a laboratory reports a negative result for a blind sample that was supposed to be positive, a laboratory reports a positive result for a blind sample that was supposed to be negative):

- (a) The MRO must contact the laboratory and attempt to determine if the laboratory made an error during the testing or reporting of the sample;
- (b) The MRO must contact the blind sample supplier and attempt to determine if the supplier made an error during the preparation or transfer of the sample;
- (c) The MRO must contact the collector and determine if the collector made an error when preparing the blind sample for transfer to the HHS-certified laboratory;
- (d) If there is no obvious reason for the inconsistent result, the MRO must notify both the Federal agency for which the blind sample was submitted and the Secretary; and
- (e) The Secretary shall investigate the blind sample error. A report of the Secretary's investigative findings and the corrective action taken in response to identified deficiencies must be sent to the Federal agency. The Secretary shall ensure notification of the finding as appropriate to other Federal agencies and coordinate any necessary actions to prevent the recurrence of the error.

Subpart K—Laboratory

Section 11.1 *What must be included in the HHS-certified laboratory's standard operating procedure manual?*

- (a) An HHS-certified laboratory must have a standard operating procedure (SOP) manual that describes, in detail, all HHS-certified laboratory operations. When followed, the SOP manual ensures that all specimens are tested using the same procedures.
- (b) The SOP manual must include at a minimum, but is not limited to, a detailed description of the following:
 - (1) Chain of custody procedures;
 - (2) Accessioning;
 - (3) Security;
 - (4) Quality control/quality assurance programs;
 - (5) Analytical methods and procedures;
 - (6) Equipment and maintenance programs;

- (7) Personnel training;
- (8) Reporting procedures; and
- (9) Computers, software, and laboratory information management systems.

(c) All procedures in the SOP manual must be compliant with these Guidelines and all guidance provided by the Secretary.

(d) A copy of all procedures that have been replaced or revised and the dates on which the procedures were in effect must be maintained for at least 2 years.

Section 11.2 *What are the responsibilities of the responsible person (RP)?*

(a) Manage the day-to-day operations of the HHS-certified laboratory even if another individual has overall responsibility for alternate areas of a multi-specialty laboratory.

(b) Ensure that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the HHS-certified laboratory. The RP must ensure the continued competency of laboratory staff by documenting their in-service training, reviewing their work performance, and verifying their skills.

(c) Maintain a complete and current SOP manual that is available to all personnel of the HHS-certified laboratory and ensure that it is followed. The SOP manual must be reviewed, signed, and dated by the RP(s) when procedures are first placed into use and when changed or when a new individual assumes responsibility for the management of the HHS-certified laboratory. The SOP must be reviewed and documented by the RP annually.

(d) Maintain a quality assurance program that ensures the proper performance and reporting of all test results; verify and monitor acceptable analytical performance for all controls and calibrators; monitor quality control testing; and document the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(e) Initiate and implement all remedial actions necessary to maintain satisfactory operation and performance of the HHS-certified laboratory in response to the following: quality control systems not within performance specifications; errors in result reporting or in analysis of performance testing samples; and inspection deficiencies. The RP must ensure that specimen results are not reported until all corrective actions have been taken and that the results provided are accurate and reliable.

Section 11.3 *What scientific qualifications must the RP have?*

The RP must have documented scientific qualifications in analytical toxicology.

Minimum qualifications are:

- (a) Certification or licensure as a laboratory director by the state in forensic or clinical laboratory toxicology, a Ph.D. in one of the natural sciences, or training and experience comparable to a Ph.D. in one of the natural sciences with training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology;
- (b) Experience in forensic toxicology with emphasis on the collection and analysis of biological specimens for drugs of abuse;
- (c) Experience in forensic applications of analytical toxicology (e.g., publications, court testimony, conducting research on the pharmacology and toxicology of drugs of abuse) or qualify as an expert witness in forensic toxicology;
- (d) Fulfillment of the RP responsibilities and qualifications, as demonstrated by the HHS-certified laboratory's performance and verified upon interview by HHS-trained inspectors during each on-site inspection; and
- (e) Qualify as a certifying scientist.

Section 11.4 *What happens when the RP is absent or leaves an HHS-certified laboratory?*

(a) HHS-certified laboratories must have multiple RPs or one RP and an alternate RP. If the RP(s) are concurrently absent, an alternate RP must be present and qualified to fulfill the responsibilities of the RP.

(1) If an HHS-certified laboratory is without the RP and alternate RP for 14 calendar days or less (e.g., temporary absence due to vacation, illness, or business trip), the HHS-certified laboratory may continue operations and testing of Federal agency specimens under the direction of a certifying scientist.

(2) The Secretary, in accordance with these Guidelines, will suspend a laboratory's HHS certification for all specimens if the laboratory does not have an RP or alternate RP for a period of more than 14 calendar days. The suspension will be lifted upon the Secretary's approval of a new permanent RP or alternate RP.

(b) If the RP leaves an HHS-certified laboratory:

(1) The HHS-certified laboratory may maintain certification and continue testing federally regulated specimens

under the direction of an alternate RP for a period of up to 180 days while seeking to hire and receive the Secretary's approval of the RP's replacement.

(2) The Secretary, in accordance with these Guidelines, will suspend a laboratory's HHS certification for all federally regulated specimens if the laboratory does not have a permanent RP within 180 days. The suspension will be lifted upon the Secretary's approval of the new permanent RP.

(c) To nominate an individual as an RP or alternate RP, the HHS-certified laboratory must submit the following documents to the Secretary: the candidate's current resume or curriculum vitae, copies of diplomas and licensures, a training plan (not to exceed 90 days) to transition the candidate into the position, an itemized comparison of the candidate's qualifications to the minimum RP qualifications described in the Guidelines, and have official academic transcript(s) submitted from the candidate's institution(s) of higher learning. The candidate must be found qualified during an on-site inspection of the HHS-certified laboratory.

(d) The HHS-certified laboratory must fulfill additional inspection and PT criteria as required prior to conducting federally regulated testing under a new RP.

Section 11.5 What qualifications must an individual have to certify a result reported by an HHS-certified laboratory?

(a) A certifying scientist must have:

(1) At least a bachelor's degree in chemical or biological sciences or medical technology, or equivalent;

(2) Training and experience in the analytical methods and forensic procedures used by the HHS-certified laboratory relevant to the results that the individual certifies; and

(3) Training and experience in reviewing and reporting forensic test results and maintaining chain of custody, and an understanding of appropriate remedial actions in response to problems that may arise.

(b) A certifying technician must have:

(1) Training and experience in the analytical methods and forensic procedures used by the HHS-certified laboratory relevant to the results that the individual certifies; and

(2) Training and experience in reviewing and reporting forensic test results and maintaining chain of custody, and an understanding of appropriate remedial actions in response to problems that may arise.

Section 11.6 What qualifications and training must other personnel of an HHS-certified laboratory have?

(a) All HHS-certified laboratory staff (e.g., technicians, administrative staff) must have the appropriate training and skills for the tasks they perform.

(b) Each individual working in an HHS-certified laboratory must be properly trained (i.e., receive training in each area of work that the individual will be performing, including training in forensic procedures related to their job duties) before they are permitted to work independently with federally regulated specimens. All training must be documented.

Section 11.7 What security measures must an HHS-certified laboratory maintain?

(a) An HHS-certified laboratory must control access to the drug testing facility, specimens, aliquots, and records.

(b) Authorized visitors must be escorted at all times, except for individuals conducting inspections (i.e., for the Department, a federal agency, a state, or other accrediting agency) or emergency personnel (e.g., firefighters and medical rescue teams).

(c) An HHS-certified laboratory must maintain records documenting the identity of the visitor and escort, date, time of entry and exit, and purpose for access to the secured area.

Section 11.8 What are the laboratory chain of custody requirements for specimens and aliquots?

(a) HHS-certified laboratories must use chain of custody procedures (internal and external) to maintain control and accountability of specimens from the time of receipt at the laboratory through completion of testing, reporting of results, during storage, and continuing until final disposition of the specimens.

(b) HHS-certified laboratories must use chain of custody procedures to document the handling and transfer of aliquots throughout the testing process until final disposal.

(c) The chain of custody must be documented using either paper copy or electronic procedures.

(d) Each individual who handles a specimen or aliquot must sign and complete the appropriate entries on the chain of custody form when the specimen or aliquot is handled or transferred, and every individual in the chain must be identified.

(e) The date and purpose must be recorded on an appropriate chain of custody form each time a specimen or aliquot is handled or transferred.

Section 11.9 What are the requirements for an initial drug test?

(a) An initial drug test may be:

(1) An immunoassay or

(2) An alternate technology (e.g., spectrometry, spectroscopy).

(b) An HHS-certified laboratory must validate an initial drug test before testing specimens.

(c) Initial drug tests must be accurate and reliable for the testing of specimens when identifying drugs or their metabolites.

(d) An HHS-certified laboratory may conduct a second initial drug test using a method with different specificity, to rule out cross-reacting compounds. This second initial drug test must satisfy the batch quality control requirements specified in Section 11.11.

Section 11.10 What must an HHS-certified laboratory do to validate an initial drug test?

(a) An HHS-certified laboratory must demonstrate and document the following for each initial drug test:

(1) The ability to differentiate negative specimens from those requiring further testing;

(2) The performance of the test around the cutoff, using samples at several concentrations between 0 and 150 percent of the cutoff;

(3) The effective concentration range of the test (linearity);

(4) The potential for carryover;

(5) The potential for interfering substances; and

(6) The potential matrix effects if using an alternate technology.

(b) Each new lot of reagents must be verified prior to being placed into service.

(c) Each initial drug test using alternate technology must be re-verified periodically or at least annually.

Section 11.11 What are the batch quality control requirements when conducting an initial drug test?

(a) Each batch of specimens must contain the following controls:

(1) At least one control certified to contain no drug or drug metabolite;

(2) At least one positive control with the drug or drug metabolite targeted at a concentration 25 percent above the cutoff;

(3) At least one control with the drug or drug metabolite targeted at a concentration 75 percent of the cutoff; and

(4) At least one control that appears as a donor specimen to the analysts.

(b) Controls must total at least 4 percent of the controls and specimens analyzed in each batch.

Section 11.12 What are the requirements for a confirmatory drug test?

(a) The analytical method must use mass spectrometric identification (e.g., gas chromatography-mass spectrometry [GC-MS], liquid chromatography-mass spectrometry [LC-MS], GC-MS/MS, LC-MS/MS) or equivalent.

(b) A confirmatory drug test must be validated before it can be used to test federally regulated specimens.

(c) Confirmatory drug tests must be accurate and reliable for the testing of an oral fluid specimen when identifying and quantifying drugs or their metabolites.

Section 11.13 What must an HHS-certified laboratory do to validate a confirmatory drug test?

(a) An HHS-certified laboratory must demonstrate and document the following for each confirmatory drug test:

- (1) The linear range of the analysis;
- (2) The limit of detection;
- (3) The limit of quantification;
- (4) The accuracy and precision at the cutoff;
- (5) The accuracy (bias) and precision at 40 percent of the cutoff;
- (6) The potential for interfering substances;
- (7) The potential for carryover; and
- (8) The potential matrix effects if using liquid chromatography coupled with mass spectrometry.

(b) Each new lot of reagents must be verified prior to being placed into service.

(c) HHS-certified laboratories must re-verify each confirmatory drug test method periodically or at least annually.

Section 11.14 What are the batch quality control requirements when conducting a confirmatory drug test?

(a) At a minimum, each batch of specimens must contain the following calibrators and controls:

- (1) A calibrator at the cutoff;
- (2) At least one control certified to contain no drug or drug metabolite;
- (3) At least one positive control with the drug or drug metabolite targeted at 25 percent above the cutoff; and
- (4) At least one control targeted at or less than 40 percent of the cutoff.

(b) Calibrators and controls must total at least 10 percent of the aliquots analyzed in each batch.

Section 11.15 What are the analytical and quality control requirements for conducting specimen validity tests?

An HHS-certified laboratory may perform specimen validity tests in accordance with Sections 3.1 and 3.6.

(a) Each invalid, adulterated, or substituted specimen validity test result must be based on an initial specimen validity test on one aliquot and a confirmatory specimen validity test on a second aliquot;

(b) The HHS-certified laboratory must establish acceptance criteria and analyze calibrators and controls as appropriate to verify and document the validity of the test results; and

(c) Controls must be analyzed concurrently with specimens.

Section 11.16 What must an HHS-certified laboratory do to validate a specimen validity test?

An HHS-certified laboratory must demonstrate and document for each specimen validity test the appropriate performance characteristics of the test, and must re-verify the test periodically, or at least annually. Each new lot of reagents must be verified prior to being placed into service.

Section 11.17 What are the requirements for an HHS-certified laboratory to report a test result?

(a) Laboratories must report a test result to the agency's MRO within an average of 5 working days after receipt of the specimen. Reports must use the Federal CCF and/or an electronic report, as described in items o and p below. Before any test result can be reported, it must be certified by a certifying scientist or a certifying technician (as appropriate).

(b) A primary (A) specimen is reported negative when each initial drug test is negative or if the specimen is negative upon confirmatory drug testing, and the specimen does not meet invalid criteria as described in Section 11.17(g)(1) through (5).

(c) A primary (A) specimen is reported positive for a specific drug or drug metabolite when both the initial drug test is positive, and the confirmatory drug test is positive in accordance with the cutoffs listed in the drug testing panel.

(d) A primary (A) oral fluid specimen is reported adulterated when the presence of an adulterant is verified using an initial test on the first aliquot and a different confirmatory test on the second aliquot.

(e) A primary (A) oral fluid specimen is reported substituted when a biomarker is not present or is present at a concentration inconsistent with that established for human oral fluid.

(f) For a specimen that has an invalid result for one of the reasons stated in Section 11/17(g)(1) through (5), the HHS-certified laboratory shall contact the MRO and both will decide if testing

by another HHS-certified laboratory would be useful in being able to report a positive, adulterated, or substituted result. If no further testing is necessary, the HHS-certified laboratory then reports the invalid result to the MRO.

(g) A primary (A) oral fluid specimen is reported as an invalid result when:

(1) Interference occurs on the initial drug tests on two separate aliquots (i.e., valid initial drug test results cannot be obtained);

(2) Interference with the confirmatory drug test occurs on at least two separate aliquots of the specimen and the HHS-certified laboratory is unable to identify the interfering substance;

(3) The physical appearance of the specimen is such that testing the specimen may damage the laboratory's instruments;

(4) The physical appearances of the A and B specimens are clearly different (note: A is tested); or

(5) A specimen validity test on two separate aliquots of the specimen indicates that the specimen is not valid for testing.

(h) An HHS-certified laboratory shall reject a primary (A) specimen for testing when a fatal flaw occurs as described in Section 15.1 or when a correctable flaw as described in Section 15.2 is not recovered. The HHS-certified laboratory will indicate on the Federal CCF that the specimen was rejected for testing and provide the reason for reporting the rejected for testing result.

(i) An HHS-certified laboratory must report all positive, adulterated, substituted, and invalid test results for an oral fluid specimen. For example, a specimen can be positive for a drug and adulterated.

(j) An HHS-certified laboratory must report the confirmatory concentration of each drug or drug metabolite reported for a positive result.

(k) An HHS-certified laboratory must report numerical values of the specimen validity test results that support an adulterated, substituted, or invalid result (as appropriate).

(l) An HHS-certified laboratory must report results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

(m) When the concentration of a drug or drug metabolite exceeds the validated linear range of the confirmatory test, HHS-certified laboratories may report to the MRO that the quantitative value exceeds the linear range of the test or that the quantitative value is greater than "insert the actual value for the upper limit of the linear range," or laboratories may report a quantitative value above the upper limit of the linear range that was obtained by diluting an

aliquot of the specimen to achieve a result within the method's linear range and multiplying the result by the appropriate dilution factor.

(n) HHS-certified laboratories may transmit test results to the MRO by various electronic means (e.g., fax, computer). Transmissions of the reports must ensure confidentiality and the results may not be reported verbally by telephone. Laboratories and external service providers must ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

(o) HHS-certified laboratories must fax, courier, mail, or electronically transmit a legible image or copy of the completed federal CCF and/or forward a computer-generated electronic report. The computer-generated report must contain sufficient information to ensure that the test results can accurately represent the content of the custody and control form that the MRO received from the collector.

(p) For positive, adulterated, substituted, invalid, and rejected specimens, laboratories must fax, courier, mail, or electronically transmit a legible image or copy of the completed Federal CCF.

Section 11.18 How long must an HHS-certified laboratory retain specimens?

(a) An HHS-certified laboratory must retain specimens that were reported as positive, adulterated, substituted, or as an invalid result for a minimum of 1 year.

(b) Retained oral fluid specimens must be kept in secured storage in accordance with the collection device manufacturer's specifications (i.e., frozen at -20°C or less, or refrigerated), to ensure their availability for retesting during an administrative or judicial proceeding.

(c) Federal agencies may request that the HHS-certified laboratory retain a specimen for an additional specified period of time and must make that request within the 1-year period following the laboratory's reporting of the specimen.

Section 11.19 How long must an HHS-certified laboratory retain records?

(a) An HHS-certified laboratory must retain all records generated to support test results for at least 2 years. The laboratory may convert hardcopy records to electronic records for storage and then discard the hardcopy records after 6 months.

(b) A Federal agency may request the HHS-certified laboratory to maintain a documentation package (as described in

Section 11.21) that supports the chain of custody, testing, and reporting of a donor's specimen that is under legal challenge by a donor. The Federal agency's request to the laboratory must be in writing and must specify the period of time to maintain the documentation package.

(c) An HHS-certified laboratory may retain records other than those included in the documentation package beyond the normal 2-year period of time.

Section 11.20 What statistical summary reports must an HHS-certified laboratory provide for oral fluid testing?

(a) HHS-certified laboratories must provide to each Federal agency for which they perform testing a semiannual statistical summary report that must be submitted by mail, fax, or email within 14 working days after the end of the semiannual period. The summary report must not include any personally identifiable information. A copy of the semiannual statistical summary report will also be sent to the Secretary or designated HHS representative. The semiannual statistical report contains the following information:

- (1) Reporting period (inclusive dates);
- (2) HHS-certified laboratory name and address;
- (3) Federal agency name;
- (4) Number of specimen results reported;
- (5) Number of specimens collected by reason for test;
- (6) Number of specimens reported negative;
- (7) Number of specimens rejected for testing because of a fatal flaw;
- (8) Number of specimens rejected for testing because of an uncorrected flaw;
- (9) Number of specimens tested positive by each initial drug test;
- (10) Number of specimens reported positive;
- (11) Number of specimens reported positive for each drug and drug metabolite;
- (12) Number of specimens reported adulterated;
- (13) Number of specimens reported substituted; and
- (14) Number of specimens reported as invalid result.

(b) An HHS-certified laboratory must make copies of an agency's test results available when requested to do so by the Secretary or by the Federal agency for which the laboratory is performing drug-testing services.

(c) An HHS-certified laboratory must ensure that a qualified individual is available to testify in a proceeding against a federal employee when the proceeding is based on a test result reported by the laboratory.

Section 11.21 What HHS-certified laboratory information is available to a federal agency?

(a) Following a federal agency's receipt of a positive, adulterated, or substituted drug test report, the federal agency may submit a written request for copies of the records relating to the drug test results or a documentation package or any relevant certification, review, or revocation of certification records.

(b) Standard documentation packages provided by an HHS-certified laboratory must contain the following items:

- (1) A cover sheet providing a brief description of the procedures and tests performed on the donor's specimen;
- (2) A table of contents that lists all documents and materials in the package by page number;
- (3) A copy of the federal CCF with any attachments, internal chain of custody records for the specimen, memoranda (if any) generated by the HHS-certified laboratory, and a copy of the electronic report (if any) generated by the HHS-certified laboratory;
- (4) A brief description of the HHS-certified laboratory's initial drug (and specimen validity, if applicable) testing procedures, instrumentation, and batch quality control requirements;
- (5) Copies of the initial test data for the donor's specimen with all calibrators and controls and copies of all internal chain of custody documents related to the initial tests;
- (6) A brief description of the HHS-certified laboratory's confirmatory drug (and specimen validity, if applicable) testing procedures, instrumentation, and batch quality control requirements;
- (7) Copies of the confirmatory test data for the donor's specimen with all calibrators and controls and copies of all internal chain of custody documents related to the confirmatory tests; and
- (8) Copies of the résumé or curriculum vitae for the RP(s) and the certifying technician or certifying scientist of record.

Section 11.22 What HHS-certified laboratory information is available to a federal applicant or employee?

Federal applicants or employees who are subject to a workplace drug test may submit a written request through the MRO and/or the federal agency requesting copies of any records relating to their drug test results or a documentation package as described in Section 11.21(b) and any relevant certification, review, or revocation of certification records. Federal applicants or employees, or their designees, are not permitted access to their specimens collected pursuant to Executive Order

12564, Public Law 100–71, and these Guidelines.

Section 11.23 *What types of relationships are prohibited between an HHS-certified laboratory and an MRO?*

An HHS-certified laboratory must not enter into any relationship with a federal agency's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having a federal agency use a specific MRO.

This means an MRO may be an employee of the agency or a contractor for the agency; however, an MRO shall not be an employee or agent of or have any financial interest in the HHS-certified laboratory for which the MRO is reviewing drug testing results. Additionally, an MRO shall not derive any financial benefit by having an agency use a specific HHS-certified laboratory or have any agreement with an HHS-certified laboratory that may be construed as a potential conflict of interest.

Subpart L—Instrumented Initial Test Facility (IITF)

Section 12.1 *May an IITF test oral fluid specimens for a federal agency's workplace drug testing program?*

No, only HHS-certified laboratories are authorized to test oral fluid specimens for Federal agency workplace drug testing programs in accordance with these Guidelines.

Subpart M—Medical Review Officer (MRO)

Section 13.1 *Who may serve as an MRO?*

(a) A currently licensed physician who has:

- (1) A Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) degree;
- (2) Knowledge regarding the pharmacology and toxicology of illicit drugs;

(3) The training necessary to serve as an MRO as set out in Section 13.3;

(4) Satisfactorily passed an initial examination administered by a nationally recognized entity or a subspecialty board that has been approved by the Secretary to certify MROs; and

(5) At least every five years from initial certification, completed requalification training on the topics in Section 13.3 and satisfactorily passed a requalification examination administered by a nationally recognized entity or a subspecialty board that has been approved by the Secretary to certify MROs.

Section 13.2 *How are nationally recognized entities or subspecialty boards that certify MROs approved?*

All nationally recognized entities or subspecialty boards which seek approval by the Secretary to certify physicians as MROs for Federal workplace drug testing programs must submit their qualifications, a sample examination, and other necessary supporting examination materials (e.g., answers, previous examination statistics or other background examination information, if requested). Approval will be based on an objective review of qualifications that includes a copy of the MRO applicant application form, documentation that the continuing education courses are accredited by a professional organization, and the delivery method and content of the examination. Each approved MRO certification entity must resubmit their qualifications for approval every two years. The Secretary shall publish at least every two years a notification in the **Federal Register** listing those entities and subspecialty boards that have been approved.

Section 13.3 *What training is required before a physician may serve as an MRO?*

(a) A physician must receive training that includes a thorough review of the following:

- (1) The collection procedures used to collect Federal agency specimens;
- (2) How to interpret test results reported by HHS-certified IITFs and laboratories (e.g., negative, negative/dilute, positive, adulterated, substituted, rejected for testing, and invalid);

(3) Chain of custody, reporting, and recordkeeping requirements for Federal agency specimens;

(4) The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs for all authorized specimen types; and

(5) Procedures for interpretation, review (e.g., donor interview for legitimate medical explanations, review of documentation provided by the donor to support a legitimate medical explanation), and reporting of results specified by any federal agency for which the individual may serve as an MRO;

(b) Certified MROs must complete training on any revisions to these Guidelines including any changes to the drug and biomarker testing panels prior to their effective date, to continue serving as an MRO for federal agency specimens.

Section 13.4 *What are the responsibilities of an MRO?*

(a) The MRO must review all positive, adulterated, rejected for testing, invalid, and substituted test results.

(b) Staff under the direct, personal supervision of the MRO may review and report negative and (for urine) negative/dilute test results to the agency's designated representative. The MRO must review at least 5 percent of all negative results reported by the MRO staff to ensure that the MRO staff are properly performing the review process.

(c) The MRO must discuss potential invalid results with the HHS-certified laboratory, as addressed in Section 11.17(f) to determine whether testing at another HHS-certified laboratory may be warranted.

(d) After receiving a report from an HHS-certified laboratory or (for urine) HHS-certified IITF, the MRO must:

(1) Review the information on the MRO copy of the federal CCF that was received from the collector and the report received from the HHS-certified laboratory or HHS-certified IITF;

(2) Interview the donor when required;

(3) Make a determination regarding the test result; and

(4) Report the verified result to the federal agency.

(e) The MRO must maintain records for a minimum of two years while maintaining the confidentiality of the information. The MRO may convert hardcopy records to electronic records for storage and discard the hardcopy records after six months.

(f) The MRO must conduct a medical examination or a review of the examining physician's findings and make a determination of refusal to test or cancelled test when a collector reports that the donor was unable to provide a specimen and an alternate specimen was not collected, as addressed in Sections 8.6 and 13.6.

Section 13.5 *What must an MRO do when reviewing an oral fluid specimen's test results?*

(a) When the HHS-certified laboratory reports a negative result for the primary (A) specimen, the MRO reports a negative result to the agency.

(b) When the HHS-certified laboratory reports multiple results for the primary (A) specimen, the MRO must follow the verification procedures described in Section 13.5(c) through (f) and:

(1) The MRO reports all verified positive and/or refusal to test results to the federal agency.

(2) If an invalid result was reported in conjunction with a positive, adulterated,

or substituted result, the MRO does not report the verified invalid result to the Federal agency at this time. The MRO takes action for the verified invalid result(s) for the primary (A) specimen as described in Section 13.5(e) only when:

(i) The MRO verifies the positive, adulterated, or substituted result as negative based on a legitimate medical explanation as described in Section 13.5(c)(2) and (d)(1), or based on codeine and/or morphine concentrations less than 150 ng/mL as described in Section 13.5(c)(3)(i); or

(ii) The split (B) specimen is tested and reported as a failure to reconfirm the positive, adulterated, or substituted result reported for the primary (A) specimen as described in Section 14.6(m).

(c) When the HHS-certified laboratory reports a positive result for the primary (A) specimen, the MRO must contact the donor to determine if there is any legitimate medical explanation for the positive result.

(1) If the donor admits unauthorized use of the drug(s) that caused the positive result, the MRO reports the test result as positive to the agency. The MRO must document the donor's admission of unauthorized drug use in the MRO records and in the MRO's report to the Federal agency.

(2) If the donor provides documentation (e.g., a valid prescription) to support a legitimate medical explanation for the positive result, the MRO reports the test result as negative to the agency.

(i) Passive exposure to a drug (e.g., exposure to marijuana smoke) is not a legitimate medical explanation for a positive drug test result.

(ii) Ingestion of food products containing a drug (e.g., products containing marijuana) is not a legitimate medical explanation for a positive drug test result. See exceptions for positive codeine and morphine results in Section 13.5(c)(3).

(iii) A physician's authorization or medical recommendation for a Schedule 1 controlled substance is not a legitimate medical explanation for a positive drug test result.

(3) If the donor is unable to provide a legitimate medical explanation for the positive result, the MRO reports the positive result to the agency, for all drugs except codeine and/or morphine as follows:

(i) For codeine and/or morphine less than 150 ng/mL, the MRO must report the result as negative to the agency, unless the donor admits unauthorized use of the drug(s) that caused the positive result as described in Section 13.5(c)(1).

(ii) For codeine and/or morphine equal to or greater than 150 ng/mL and no legitimate medical explanation, the MRO shall report a positive result to the agency. Consumption of food products must not be considered a legitimate medical explanation for the donor having morphine or codeine at or above this concentration.

(d) When the HHS-certified laboratory reports an adulterated or substituted result for the primary (A) oral fluid specimen, the MRO contacts the donor to determine if the donor has a legitimate medical explanation for the adulterated or substituted result.

(1) If the donor provides a legitimate medical explanation, the MRO reports a negative result to the Federal agency.

(2) If the donor is unable to provide a legitimate medical explanation, the MRO reports a refusal to test to the Federal agency because the oral fluid specimen was adulterated or substituted.

(e) When the HHS-certified laboratory reports an invalid result for the primary (A) oral fluid specimen, the MRO must contact the donor to determine if there is a legitimate explanation for the invalid result.

(1) If the donor provides a legitimate explanation (e.g., a prescription medicine), the MRO reports a test cancelled result with the reason for the invalid result and informs the Federal agency that there is a legitimate explanation for the invalid result.

(i) For a random, post-accident, or reasonable suspicion/cause test, the MRO informs the agency that a recollection is not required.

(ii) If a negative result is required (i.e., for pre-employment, return-to-duty, or follow-up test), the MRO directs the agency to immediately collect another specimen from the donor. If the agency allows urine collection, the MRO may direct an unobserved urine collection, depending on the reason for the invalid result.

(2) If the donor is unable to provide a legitimate explanation for an invalid result, the MRO reports a test cancelled result with the reason for the invalid result and directs the Federal agency to immediately collect another specimen from the donor.

(i) If the second specimen collected provides a valid result, the MRO follows the procedures in Section 13.5(a) through (d).

(ii) If the second specimen collected provides an invalid result, the MRO reports this specimen as test cancelled and recommends that the agency collect a urine specimen under direct observation. If the Federal agency does not authorize collection of another

specimen type, the MRO consults with the agency to arrange a clinical evaluation as described in Section 13.7, to determine whether there is a legitimate medical reason for the invalid result.

(f) When the HHS-certified laboratory reports a rejected for testing result for the primary (A) specimen, the MRO reports a test cancelled result to the agency and recommends that the agency collect another specimen from the donor.

13.6 What action does the MRO take when the collector reports that the donor did not provide a sufficient amount of oral fluid for a drug test?

(a) When another specimen type (e.g., urine) was collected in accordance with Section 8.6, the MRO reviews and reports the test result in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using the alternate specimen.

(b) When the Federal agency did not authorize the collection of an alternate specimen, the MRO consults with the Federal agency. The Federal agency immediately directs the donor to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the donor's failure to provide a specimen. The MRO may perform this evaluation if the MRO has appropriate expertise.

(1) For purposes of this section, a medical condition includes an ascertainable physiological condition. Permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection and considered not amenable to correction or cure for an extended period of time.

(2) If a physician other than the MRO performs the evaluation, the MRO must provide the other physician with the following information and instructions:

(i) That the donor was required to take a federally regulated drug test, but was unable to provide a sufficient amount of oral fluid to complete the test;

(ii) The consequences of the appropriate Federal agency regulation for refusing to take the required drug test;

(iii) That, after completing the evaluation, the referral physician must agree to provide a written statement to the MRO with a recommendation for one of the determinations described in Section 13.6(b)(3) and the basis for the recommendation. The statement must not include detailed information on the donor's medical condition beyond what

is necessary to explain the referral physician's conclusion.

(3) If a physician other than the MRO performed the evaluation, the MRO must consider and assess the referral physician's recommendations in making the determination. The MRO must make one of the following determinations and report it to the federal agency in writing:

(i) A medical condition as defined in Section 13.6(b)(1) has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of oral fluid, but is not a permanent or long-term disability. The MRO must report a test cancelled result to the Federal agency. If a negative result is required (*i.e.*, for pre-employment, return-to-duty, or follow-up test), the MRO directs the agency to immediately collect another oral fluid specimen from the donor or recommends collection of a urine specimen, depending on the medical condition.

(ii) A permanent or long-term medical condition as defined in Section 13.6(b)(1) has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of oral fluid and is highly likely to prevent the donor from providing a sufficient amount of oral fluid for a very long or indefinite period of time. The MRO actions in this context will be dictated by the reason for testing. For a pre-employment, return-to-duty, or a follow-up test, the MRO consults with the federal agency and recommends that the agency authorize collection of a urine specimen. If the agency does not authorize the urine collection, the MRO follows the requirements of Section 13.7. If the agency authorizes the urine collection, or if the reason for testing is random, post-accident, or reasonable suspicion/cause, the MRO reports the test as cancelled and directs the agency to collect a urine specimen from the donor.

(iii) There is no adequate basis to conclude that a medical condition has or, with a high degree of probability, could have precluded the donor from providing a sufficient amount of oral fluid. The MRO must report a refusal to test to the Federal agency.

(4) When a Federal agency receives a report from the MRO indicating that a random, post-accident, or reasonable suspicion/cause test is cancelled because of an acute or temporary medical condition as provided in Section 13.6(b)(3)(i), the agency takes no further action with respect to the donor. When the MRO reports that a random, post-accident, or reasonable suspicion/cause test is canceled because of a permanent or long-term medical

condition as provided in Section 13.6(b)(3)(ii), the agency takes no further action with respect to the donor other than authorizing collection of an alternate specimen type (*i.e.*, authorized by the Mandatory Guidelines for Federal Workplace Drug Testing Programs) for any subsequent collections, in accordance with the Federal agency plan. The donor remains in the random testing pool.

Section 13.7 What happens when an individual is unable to provide a sufficient amount of oral fluid for a Federal agency applicant/pre-employment test, a follow-up test, or a return-to-duty test because of a permanent or long-term medical condition?

(a) This section concerns a situation in which the donor has a medical condition that precludes the donor from providing a sufficient specimen for a federal agency applicant/pre-employment test, a follow-up test, or a return-to-duty test and the condition involves a permanent or long-term disability and the federal agency does not authorize collection of an alternate specimen. The MRO must take the following action:

(1) Determine if there is clinical evidence that the individual is an illicit drug user. The MRO must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the donor's physician and/or the physician who conducted the evaluation under Section 13.6.

(2) If the MRO does not personally conduct the medical evaluation, the MRO must ensure that one is conducted by a licensed physician who is acceptable to the MRO.

(b) If the medical evaluation reveals no clinical evidence of drug use, the MRO must report the result to the Federal agency as a negative test with written notations regarding results of both the evaluation conducted under Section 13.6 and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient oral fluid specimen impossible, and for the determination that no signs and symptoms of drug use exist. The MRO recommends that the agency authorize collection of an alternate specimen type (*e.g.*, urine) for any subsequent collections.

(c) If the medical evaluation reveals clinical evidence of drug use, the MRO must report the result to the Federal agency as a cancelled test with written notations regarding results of both the

evaluation conducted under Section 13.6 and any further medical examination. This report must state that a permanent or long-term medical condition [as defined in Section 13.6(b)(1)] exists, making provision of a sufficient oral fluid specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (*e.g.*, the federal agency is not authorized to allow the donor to begin or resume performing official functions, because a negative test is needed for that purpose).

Section 13.8 How does an MRO report a primary (A) specimen test result to an agency?

(a) The MRO must report all verified results to an agency using the completed MRO copy of the Federal CCF or a separate report using a letter/memorandum format. The MRO may use various electronic means for reporting (*e.g.*, fax, computer). Transmissions of the reports must ensure confidentiality. The MRO and external service providers must ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

(b) A verified result may not be reported to the agency until the MRO has completed the review process.

(c) The MRO must send a copy of either the completed MRO copy of the federal CCF or the separate letter/memorandum report for all positive, adulterated, and substituted results.

(d) The MRO must not disclose numerical values of drug test results to the agency.

(e) The MRO must report drug test results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

Section 13.9 Who may request a test of a split (B) specimen?

(a) For a positive, adulterated, or substituted result reported for a primary (A) specimen, a donor may request through the MRO that the split (B) specimen be tested by a second laboratory certified by HHS for that specimen type to verify the result reported by the first HHS-certified laboratory.

(b) The donor has 72 hours from the time the MRO notified the donor that the donor's specimen was reported positive, adulterated, or substituted to request a test of the split (B) specimen. The MRO must inform the donor that the donor has the opportunity to request a test of the split (B) specimen when the

MRO informs the donor that a positive, adulterated, or substituted result is being reported to the Federal agency on the primary (A) specimen.

Section 13.10 *What types of relationships are prohibited between an MRO and an HHS-certified laboratory?*

An MRO must not be an employee, agent of, or have any financial interest in an HHS-certified laboratory for which the MRO is reviewing drug test results.

This means an MRO must not derive any financial benefit by having an agency use a specific HHS-certified laboratory or have any agreement with the HHS-certified laboratory that may be construed as a potential conflict of interest.

Section 13.11 *What reports must an MRO provide to the Secretary for oral fluid testing?*

(a) An MRO must send to the Secretary or designated HHS representative a semiannual report of Federal agency specimens that were reported as positive for a drug or drug metabolite by a laboratory and verified as negative by the MRO. The report must not include any personally identifiable information for the donor and must be submitted by mail, fax, or other secure electronic transmission method within 14 working days after the end of the semiannual period (*i.e.*, in January and July). The semiannual report must contain the following information:

- (1) Reporting period (including dates);
- (2) MRO name, company name, and address;
- (3) Federal agency name; and
- (4) For each laboratory-reported positive drug test result that was verified as negative by the MRO:
 - (i) Specimen identification number;
 - (ii) Laboratory name and address;
 - (iii) Positive drug(s) or drug metabolite(s) verified as negative;
 - (iv) MRO reason for verifying the positive drug(s) or drug metabolite(s) as negative (*e.g.*, a donor prescription [the MRO must specify the prescribed drug]);
 - (v) All results reported to the federal agency by the MRO for the specimen; and
 - (vi) Date of the MRO report to the federal agency.

(b) An MRO must provide copies of the drug test reports that the MRO has sent to a federal agency when requested to do so by the Secretary.

(c) If an MRO did not verify any positive laboratory results as negative during the reporting period, the MRO should file a report that states that the MRO has no reportable results during the applicable reporting period.

Section 13.12 *What are a federal agency's responsibilities for designating an MRO?*

(a) Before allowing an individual to serve as an MRO for the agency, a federal agency must verify and document the following:

(1) that the individual satisfies all requirements in Section 13.1, including certification by an MRO certification organization that has been approved by the Secretary, as described in Section 13.2; and

(2) that the individual is not an employee, agent of, or has any financial interest in an HHS-certified laboratory that tests the agency's specimens, as described in Section 13.10.

(b) The federal agency must verify and document that each MRO reviewing and reporting results for the agency:

(1) completes training on any revisions to these Guidelines, including any changes to the drug and biomarker testing panels, prior to their effective date;

(2) at least every five years, maintains their certification by completing requalification training and passing a requalification examination; and

(3) provides biannual reports to the Secretary or designated HHS representative as required in Section 13.11;

(c) The Federal agency must ensure that each MRO reports drug test results to the agency in accordance with Sections 13.8 and 14.7.

(1) Before allowing an MRO to report results electronically, the agency must obtain documentation from the MRO to confirm that the MRO and any external service providers ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

Subpart N—Split Specimen Tests

Section 14.1 *When may a split (B) oral fluid specimen be tested?*

(a) The donor may request, verbally or in writing, through the MRO that the split (B) oral fluid specimen be tested at a different (*i.e.*, second) HHS-certified oral fluid laboratory when the primary (A) specimen was determined by the MRO to be positive, adulterated, or substituted.

(b) A donor has 72 hours to initiate the request after being informed of the result by the MRO. The MRO must document in the MRO's records the verbal request from the donor to have the split (B) specimen tested.

(c) If a split (B) oral fluid specimen cannot be tested by a second HHS-certified oral fluid laboratory, the MRO

reports a cancelled test to the Federal agency and the reason for the cancellation. The MRO takes action based on the reason for cancellation as follows.

(1) *No split (B) specimen (e.g., insufficient specimen, lost in transit, split not available)*: The MRO directs the federal agency to recollect another oral fluid specimen from the donor.

(2) *No second HHS-certified laboratory to test the split (B) specimen for the adulterant reported in the primary (A) specimen*: The MRO directs the federal agency to ensure the immediate collection of a specimen from the donor under direct observation, with no notice given to the donor until immediately before the collection. If urine testing is allowed by the federal agency, the MRO recommends an observed urine collection.

(3) *No second HHS-certified laboratory to test a split (B) specimen reported as substituted (i.e., for the same or a different HHS-authorized biomarker)*: The MRO directs the federal agency to ensure the immediate recollection of a specimen from the donor under direct observation, with no notice given to the donor until immediately before the collection. If urine testing is allowed by the federal agency, the MRO recommends an observed urine collection.

(d) If a donor chooses not to have the split (B) specimen tested by a second HHS-certified oral fluid laboratory, a federal agency may have a split (B) specimen retested as part of a legal or administrative proceeding to defend an original positive, adulterated, or substituted result.

Section 14.2 *How does an HHS-certified laboratory test a split (B) specimen when the primary (A) specimen was reported positive?*

(a) The testing of a split (B) specimen for a drug or metabolite is not subject to the testing cutoffs established in the drug testing panel.

(b) The HHS-certified laboratory is only required to confirm the presence of the drug or metabolite that was reported positive in the primary (A) specimen.

Section 14.3 *How does an HHS-certified laboratory test a split (B) oral fluid specimen when the primary (A) specimen was reported adulterated?*

(a) The second HHS-certified oral fluid laboratory must use its confirmatory specimen validity test at an established LOQ to reconfirm the presence of the adulterant.

(b) The HHS-certified laboratory may only conduct the confirmatory specimen

validity test(s) needed to reconfirm the adulterated result reported by the first HHS-certified laboratory.

Section 14.4 *How does an HHS-certified laboratory test a split (B) oral fluid specimen when the primary (A) specimen was reported substituted?*

An HHS-certified oral fluid laboratory must test the split (B) specimen using its confirmatory biomarker test. Note: The laboratory may test for any HHS-authorized biomarker for the split (B) specimen. It is not necessary to test for the same biomarker to reconfirm the primary (A) specimen's substituted result.

Section 14.5 *Who receives the split (B) specimen result?*

The second HHS-certified laboratory must report the result to the MRO using the HHS-specified nomenclature published with the drug and biomarker testing panels.

Section 14.6 *What action(s) does an MRO take after receiving the split (B) oral fluid specimen result from the second HHS-certified oral fluid laboratory?*

The MRO takes the following actions when the second HHS-certified laboratory reports the result for the split (B) oral fluid specimen as:

(a) *Reconfirmed the positive drug(s), adulteration, and/or substitution.* The MRO reports were reconfirmed to the agency.

(b) *Failed to reconfirm a single or all drug positive results and the specimen was adulterated.* If the donor provides a legitimate medical explanation for the adulteration result, the MRO reports a failed to reconfirm result (specifying the drug[s]) and cancels both tests. If there is no legitimate medical explanation, the MRO reports a failure to reconfirm result (specifying the drug[s]) and a refusal to test to the agency and indicates the adulterant that is present in the specimen. The MRO gives the donor 72 hours to request that Laboratory A test the primary (A) specimen for the adulterant. If Laboratory A does not perform the test, the MRO directs testing at another HHS-certified oral fluid laboratory.

(1) If the laboratory reconfirms the adulterant in the primary (A) specimen, the MRO reports a refusal to test and indicates the adulterant present.

(2) If the laboratory fails to reconfirm the adulterant in the primary (A) specimen, the MRO cancels both tests and directs the agency to immediately collect a specimen using a direct observed collection procedure. If urine testing is allowed by the Federal agency,

the MRO recommends an observed urine collection.

(c) *Failed to reconfirm a single or all drug positive results and the specimen was substituted.* If the donor provides a legitimate medical explanation for the substituted result, the MRO reports a failure to reconfirm result (specifying the drug[s]) and cancels both tests. If there is no legitimate medical explanation, the MRO reports a failed to reconfirm result (specifying the drug[s]) and a refusal to test (substituted) to the agency. The MRO gives the donor 72 hours to request that a second laboratory (Laboratory A or a different HHS-certified laboratory) test the primary (A) specimen using its confirmatory biomarker test. Note: The laboratory may test the primary (A) specimen for a different HHS-authorized biomarker than tested for the split (B) specimen.

(1) If the primary (A) specimen's test results confirm that the specimen was substituted, the MRO reports a refusal to test (substituted) to the agency.

(2) If the primary (A) specimen's results fail to confirm that the specimen was substituted, the MRO cancels both tests and directs the agency to immediately collect a specimen using a direct observed collection procedure. If urine testing is allowed by the Federal agency, the MRO recommends an observed urine collection.

(d) *Failed to reconfirm a single or all drug positive results and the specimen was not adulterated or substituted.* The MRO reports to the agency a failed to reconfirm result (specifying the drug[s]) and cancels both tests.

(e) *Failed to reconfirm a single or all drug positive results and the specimen had an invalid result.* The MRO reports to the agency a failed to reconfirm result (specifying the drug[s] and the reason for the invalid result), cancels both tests, and directs the agency to immediately collect a specimen using a direct observed collection procedure. If urine testing is allowed by the federal agency, the MRO recommends an observed urine collection.

(f) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen was adulterated.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and found that the specimen was adulterated.

(g) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen was substituted.* The MRO reports to the agency a

reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and found that the specimen was substituted.

(h) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen was not adulterated or substituted.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs.

(i) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen had an invalid result.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and reported an invalid result.

(j) *Failed to reconfirm substitution and/or adulteration.* The MRO reports to the agency a failed to reconfirm result (not substituted and/or not adulterated: specifying the adulterant) and cancels both tests.

(k) *Failed to reconfirm substitution or adulteration and the specimen had an invalid result.* The MRO reports to the agency a failed to reconfirm result (not substituted or not adulterated: specifying the adulterant, and the reason for the invalid result), cancels both tests, and directs the agency to immediately collect a specimen using a direct observed collection procedure. If urine testing is allowed by the Federal agency, the MRO recommends an observed urine collection.

(l) *Reconfirmed substitution or adulteration and failed to reconfirm a single or all drug positive results.* The MRO reports to the agency a reconfirmed result (substituted or adulterated: specifying the adulterant) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed result (substituted or adulterated) although Laboratory B failed to reconfirm the drug result(s).

(m) *Failed to reconfirm a single or all drug positive results and failed to reconfirm substitution or adulteration.* The MRO reports to the agency a failed to reconfirm result (specifying the drug[s] and not substituted or not

adulterated: specifying the adulterant) and cancels both tests.

(n) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and reconfirmed adulteration.* The MRO reports to the agency a reconfirmed result (specifying the drug[s] and adulterated: specifying the adulterant) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) and adulterated result although Laboratory B failed to reconfirm one or more drugs.

(o) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and failed to reconfirm adulteration.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s] and not adulterated: specifying the adulterant). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and failed to reconfirm the adulterated result.

(p) *Reconfirmed substitution and failed to reconfirm adulteration.* The MRO reports to the agency a reconfirmed result (substituted) and a failed to reconfirm result (not adulterated: specifying the adulterant). The MRO tells the agency that it may take action based on the substituted result although Laboratory B failed to reconfirm the adulterated result.

(q) *Reconfirmed adulteration and failed to reconfirm substitution.* The MRO reports to the agency a reconfirmed result (adulterated: specifying the adulterant) and a failed to reconfirm result (not substituted). The MRO tells the agency that it may take action based on the adulterated result although Laboratory B failed to reconfirm the substituted result.

Section 14.7 *How does an MRO report a split (B) specimen test result to an agency?*

(a) The MRO must report all verified results to an agency using the completed MRO copy of the Federal CCF or a separate report using a letter/memorandum format. The MRO may use various electronic means for reporting (e.g., fax, computer). Transmissions of the reports must ensure confidentiality. The MRO and external service providers must ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

(b) A verified result may not be reported to the agency until the MRO has completed the review process.

(c) The MRO must send a copy of either the completed MRO copy of the federal CCF or the separate letter/memorandum report for all split specimen results.

(d) The MRO must not disclose the numerical values of the drug test results to the agency.

(e) The MRO must report drug test results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

Section 14.8 *How long must an HHS-certified laboratory retain a split (B) specimen?*

A split (B) specimen is retained for the same period of time that a primary (A) specimen is retained and under the same storage conditions, in accordance with Section 11.18. This applies even for those cases when the split (B) specimen is tested by a second HHS-certified laboratory, and the second HHS-certified laboratory does not confirm the original result reported by the first HHS-certified laboratory for the primary (A) specimen.

Subpart O—Criteria for Rejecting a Specimen for Testing

Section 15.1 *What discrepancies require an HHS-certified laboratory to report an oral fluid specimen as rejected for testing?*

The following discrepancies are considered to be fatal flaws. The HHS-certified laboratory must stop the testing process, reject the specimen for testing, and indicate the reason for rejecting the specimen on the federal CCF when:

(a) The specimen ID number on the primary (A) or split (B) specimen label/seal does not match the ID number on the federal CCF, or the ID number is missing either on the federal CCF or on either specimen label/seal;

(b) The primary (A) specimen label/seal is missing, misapplied, broken, or shows evidence of tampering and the split (B) specimen cannot be re-designated as the primary (A) specimen;

(c) The primary (A) specimen was collected using an expired device (i.e., the device expiration date precedes the collection date) and the split (B) specimen cannot be re-designated as the primary (A) specimen;

(d) The collector's printed name and signature are omitted on the federal CCF;

(e) The collector failed to document observation of the volume indicator(s) at the time of collection for a collection device containing a diluent.

(f) There is an insufficient amount of specimen for analysis in the primary (A) specimen, and the split (B) specimen

cannot be re-designated as the primary (A) specimen;

(g) The accessioner failed to document the primary (A) specimen seal condition on the federal CCF at the time of accessioning, and the split (B) specimen cannot be re-designated as the primary (A) specimen;

(h) The specimen was received at the HHS-certified laboratory without a CCF;

(i) The CCF was received at the HHS-certified laboratory without a specimen;

(j) The collector performed two separate collections using one CCF; or

(k) The HHS-certified laboratory identifies a flaw (other than those specified above) that prevents testing or affects the forensic defensibility of the drug test and cannot be corrected.

Section 15.2 *What discrepancies require an HHS-certified laboratory to report a specimen as rejected for testing unless the discrepancy is corrected?*

The following discrepancies are considered to be correctable:

(a) If a collector fails to sign the Federal CCF, the HHS-certified laboratory must hold the specimen and attempt to obtain a memorandum for record to recover the collector's signature. If, after holding the specimen for at least 5 business days, the HHS-certified laboratory cannot recover the collector's signature, the laboratory must report a rejected for testing result and indicate the reason for the rejected for testing result on the Federal CCF.

(b) If a specimen is submitted using a non-Federal form or an expired Federal CCF, the HHS-certified laboratory must test the specimen and also attempt to obtain a memorandum for record explaining why a non-Federal form or an expired Federal CCF was used and ensure that the form used contains all the required information. If, after holding the report for at least 5 business days, the HHS-certified laboratory cannot obtain a memorandum for record from the collector, the laboratory must report a rejected for testing result and indicate the reason for the rejected for testing result on the report to the MRO.

Section 15.3 *What discrepancies are not sufficient to require an HHS-certified laboratory to reject an oral fluid specimen for testing or an MRO to cancel a test?*

(a) The following omissions and discrepancies on the federal CCF that are received by the HHS-certified laboratory should not cause an HHS-certified laboratory to reject an oral fluid specimen or cause an MRO to cancel a test:

(1) An incorrect laboratory name and address appearing at the top of the form;

(2) Incomplete/incorrect/unreadable employer name or address;

(3) MRO name is missing;

(4) Incomplete/incorrect MRO address;

(5) A transposition of numbers in the donor's Social Security Number or employee identification number;

(6) A telephone number is missing/incorrect;

(7) A fax number is missing/incorrect;

(8) A "reason for test" box is not marked;

(9) A "drug tests to be performed" box is not marked;

(10) The specimen type box (Oral Fluid) is not marked (*i.e.*, by the collector or laboratory);

(11) A "collection" box is not marked;

(12) The "each device within expiration date" box is not marked;

(13) The collection site address is missing;

(14) The collector's printed name is missing but the collector's signature is properly recorded;

(15) The time of collection is not indicated;

(16) The date of collection is not indicated;

(17) Incorrect name of delivery service;

(18) The collector has changed or corrected information by crossing out the original information on either the Federal CCF or specimen label/seal without dating and initialing the change; or

(19) The donor's name inadvertently appears on the HHS-certified laboratory copy of the Federal CCF or on the tamper-evident labels used to seal the specimens.

(b) The following omissions and discrepancies on the federal CCF that are made at the HHS-certified laboratory should not cause an MRO to cancel a test:

(1) The testing laboratory fails to indicate the correct name and address in the results section when a different laboratory name and address is printed at the top of the federal CCF;

(2) The accessioner fails to print their name;

(3) The certifying scientist or certifying technician fails to print their name;

(4) The certifying scientist or certifying technician accidentally initials the federal CCF rather than signing for a specimen reported as rejected for testing;

(c) The above omissions and discrepancies should occur no more than once a month. The expectation is that each trained collector and HHS-certified laboratory will make every effort to ensure that the federal CCF is

properly completed and that all the information is correct. When an error occurs more than once a month, the MRO must direct the collector or HHS-certified laboratory (whichever is responsible for the error) to immediately take corrective action to prevent the recurrence of the error.

Section 15.4 What discrepancies may require an MRO to cancel a test?

(a) An MRO must attempt to correct the following errors:

(1) The donor's signature is missing on the MRO copy of the federal CCF and the collector failed to provide a comment that the donor refused to sign the form;

(2) The certifying scientist failed to sign the federal CCF for a specimen being reported drug positive, adulterated, invalid, or substituted; or

(3) The electronic report provided by the HHS-certified laboratory does not contain all the data elements required for the HHS standard laboratory electronic report for a specimen being reported drug positive, adulterated, invalid result, or substituted.

(b) If an error in Section 15.4(a)(1) occurs, the MRO must contact the collector to obtain a statement to verify that the donor refused to sign the MRO copy. If, after at least 5 business days, the collector cannot provide such a statement, the MRO must cancel the test.

(c) If an error in Section 15.4(a)(2) occurs, the MRO must obtain a statement from the certifying scientist that they forgot to sign the Federal CCF, but did, in fact, properly conduct the certification review. If, after at least 5 business days, the MRO cannot get a statement from the certifying scientist, the MRO must cancel the test.

(d) If the error in Section 15.4(a)(3) occurs, the MRO must contact the HHS-certified laboratory. If, after at least 5 business days, the laboratory does not retransmit a corrected electronic report, the MRO must cancel the test.

Subpart P—Laboratory Suspension/Revocation Procedures

Section 16.1 When may the HHS certification of a laboratory be suspended?

These procedures apply when:

(a) The Secretary has notified an HHS-certified laboratory in writing that its certification to perform drug testing under these Guidelines has been suspended or that the Secretary proposes to revoke such certification.

(b) The HHS-certified laboratory has, within 30 days of the date of such notification or within 3 days of the date

of such notification when seeking an expedited review of a suspension, requested in writing an opportunity for an informal review of the suspension or proposed revocation.

Section 16.2 What definitions are used for this subpart?

Appellant. Means the HHS-certified laboratory which has been notified of its suspension or proposed revocation of its certification to perform testing and has requested an informal review thereof.

Respondent. Means the Director of the Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, designated to act on behalf of HHS in an informal review of a suspension or proposed revocation of certification under this subpart.

Reviewing Official. Means the person designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more of the official's employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

Section 16.3 Are there any limitations on issues subject to review?

The scope of review shall be limited to the facts relevant to any suspension or proposed revocation, the necessary interpretations of those facts, the relevant Mandatory Guidelines for Federal Workplace Drug Testing Programs, and other relevant laws. The legal validity of these Guidelines shall not be subject to review under these procedures.

Section 16.4 Who represents the parties?

The appellant's request for review shall specify the name, address, and telephone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and telephone number of the respondent's representative.

Section 16.5 When must a request for informal review be submitted?

(a) Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension or proposed revocation, a

brief statement of why the decision to suspend or propose revocation is wrong, and the appellant's request for an oral presentation, if desired.

(b) Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

Section 16.6 What is an abeyance agreement?

Upon mutual agreement of the parties to hold these procedures in abeyance, the reviewing official will stay these procedures for a reasonable time while the laboratory attempts to regain compliance with the Guidelines, or the parties otherwise attempt to settle the dispute. As part of an abeyance agreement, the parties can agree to extend the time period for requesting review of the suspension or proposed revocation. If abeyance begins after a request for review has been filed, the appellant shall notify the reviewing official at the end of the abeyance period, advising whether the dispute has been resolved. If the dispute has been resolved, the request for review will be dismissed. If the dispute has not been resolved, the review procedures will begin at the point at which they were interrupted by the abeyance agreement with such modifications to the procedures as the reviewing official deems appropriate.

Section 16.7 What procedures are used to prepare the review file and written argument?

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's Documents and Brief.* Within 15 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not to exceed 20 double-space pages, explaining why respondent's decision to suspend or propose revocation of appellant's certification is wrong (appellant's brief).

(b) *Respondent's Documents and Brief.* Within 15 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification to perform drug testing, which is tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension or proposed revocation (respondent's brief).

(c) *Reply Briefs.* Within 5 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-space pages.

(d) *Cooperative Efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive Documentation.* The reviewing official may take any appropriate step to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

Section 16.8 When is there an opportunity for oral presentation?

(a) *Electing Oral Presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the decision-making process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own initiative or at the request of the respondent.

(b) *Presiding Official.* The reviewing official or designee will be the presiding official responsible for conducting the oral presentation.

(c) *Preliminary Conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: simplifying and clarifying issues, stipulations and admissions, limitations on evidence and witnesses that will be presented at the hearing, time allotted for each witness and the hearing altogether, scheduling the hearing, and any other matter that will

assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at their discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and Place of the Oral Presentation.* The presiding official will attempt to schedule the oral presentation within 30 days of the date the appellant's request for review is received or within 10 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the Oral Presentation.*

(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more of the official's employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of Proof/Standard of Proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to suspend or propose revocation is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is wrong.

(3) *Admission of Evidence.* The Federal Rules of Evidence do not apply, and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for

insufficient evidence, or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party to oppose the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript, and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505 or 1001.

(g) *Post-hearing Procedures.* At their discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

Section 16.9 Are there expedited procedures for review of immediate suspension?

(a) *Applicability.* When the Secretary notifies an HHS-certified laboratory in writing that its certification to perform drug testing has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 3 days of the date the HHS-certified laboratory received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision is wrong, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing Official's Response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review File and Briefs.* Within 7 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following:

(1) A review file containing essential documents relevant to the review, which is tabbed, indexed, and organized chronologically; and

(2) A written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral Presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official, the presiding official will attempt to schedule the oral presentation within 7–10 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a prehearing conference in accordance with Section 16.8(c) and will conduct the oral presentation in accordance with the procedures of Section 16.8(e), (f), and (g).

(e) *Written Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7–10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in Section 16.14 will apply.

(f) *Transmission of Written Communications.* Because of the importance of timeliness for these expedited procedures, all written communication between the parties and between either party and the reviewing official shall be by fax, secured electronic transmissions, or overnight mail.

Section 16.10 Are any types of communications prohibited?

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

Section 16.11 How are communications transmitted by the reviewing official?

(a) Because of the importance of a timely review, the reviewing official should normally transmit written communications to either party by fax, secured electronic transmissions, or overnight mail in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) In counting days, include Saturdays, Sundays, and Federal holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday,

then the due date is the next Federal working day.

Section 16.12 What are the authority and responsibilities of the reviewing official?

In addition to any other authority specified in these procedures, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

Section 16.13 What administrative records are maintained?

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

Section 16.14 What are the requirements for a written decision?

(a) *Issuance of Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation. The decision will set forth the reasons for the decision and describe the basis therefore in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of Decision.* The reviewing official will attempt to issue their decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public Notice.* If the suspension and proposed revocation are upheld, the revocation will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. If the suspension and proposed revocation are denied, the revocation will not take effect, and the suspension will be lifted immediately.

Public notice will be given by publication in the **Federal Register**.

Section 16.15 Is there a review of the final administrative action?

Before any legal action is filed in court challenging the suspension or proposed revocation, respondent shall exhaust administrative remedies

provided under this subpart, unless otherwise provided by federal law. The reviewing official's decision, under Section 16.9(e) or 16.14(a) constitutes final agency action and is ripe for judicial review as of the date of the decision.

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Part IV

Department of Health and Human Services

42 CFR Chapter I

Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Urine (UrMG); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**42 CFR Chapter I**

RIN 0930-AA40

Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Urine (UrMG)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Proposed revisions to mandatory guidelines.

SUMMARY: The Department of Health and Human Services (“HHS” or “Department”) is proposing to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG), published in the **Federal Register** on October 12, 2023).

DATES: Submit comments on or before December 28, 2026.

ADDRESSES: In commenting, please refer to docket number SAMHSA–2026–0002. Because of staff and resource limitations, SAMHSA cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

- *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow “Submit a comment” instructions.

- *By regular mail.* You may mail written comments to the following address: SAMHSA, Center for Substance Abuse Prevention (CSAP), Division of Workplace Programs (DWP), 5600 Fishers Lane, Room 16N02, Rockville, MD 20857. Please allow sufficient time for mailed comments to be received before the close of the comment period.

- *By express or overnight mail.* You may send written comments to the following address: SAMHSA, CSAP, DWP, 5600 Fishers Lane, Room 16N02, Rockville, MD 20857.

- *By hand or courier.* You may deliver your written comments by hand or courier to the following address prior to the close of the comment period: SAMHSA, CSAP, DWP, 5600 Fishers Lane, Room 16N02, Rockville, MD 20857. If you intend to deliver your comments to the Rockville address, please call (240) 276–2600 in advance to schedule your arrival with one of our staff members. Because access to the SAMHSA building is secure, persons without federal government identification are encouraged to schedule their delivery or to leave

comments with the security guard at the front desk located in the main lobby of the building.

All comments received before the close of the comment period will be available for viewing by the public. Please note that all comments are posted in their entirety, including personal or confidential business information that is included in the comment. SAMHSA will post all comments before the close of the comment period on the following website: <https://www.regulations.gov>. Use the website’s search function to view the associated comments.

Comments received before the close of the comment period will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at SAMHSA, CSAP, DWP, 5600 Fishers Lane, Rockville, MD 20857, Monday through Friday of each week, excluding federal holidays, from 8:30 a.m. to 4:00 p.m. To schedule an appointment to view public comments, please call (240) 276–2600.

FOR FURTHER INFORMATION CONTACT:

Eugene D. Hayes, Ph.D., MBA, SAMHSA, CSAP, DWP; 5600 Fishers Lane, Room 16N02, Rockville, MD 20857, by telephone (240) 276–1459 or by email at Eugene.Hayes@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION:**Executive Summary**

This notice of proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using UrMG includes revisions that will: clarify the types of laboratories that may be certified to conduct testing for federal agency workplace drug testing programs, change invalid specimen criteria (*i.e.*, raise cutoff from pH 9.0 to 9.5), reflect the Department’s decision to publish the Authorized Drug Testing Panels only when revised rather than each year, revise the initial test batch quality control requirements for laboratories and instrumented initial test facilities (IITFs), allow a Medical Review Officer (MRO) to authorize use of a biomarker test for a specimen with an invalid result based on creatinine and specific gravity, and allow a split testing laboratory to test for any HHS-authorized biomarker to reconfirm substitution based on a biomarker test (*i.e.*, may test for a different biomarker). In addition, some wording changes have been made for clarity and for consistency with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid (OFMG) or to apply to any authorized

specimen type and to clarify direct observed collection procedures.

The Department is concurrently publishing a separate **Federal Register** Notice proposing revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using OFMG, including the same or similar revisions proposed for the UrMG, where appropriate.

The current authorized drug testing panel and report nomenclature table for urine and for oral fluid were published on January 16, 2025 (90 FR 4662).

Background

Pursuant to its authority under Section 503 of Public Law 100–71, 5 U.S.C. 7301, and Executive Order No. 12564, HHS establishes the scientific and technical guidelines for Federal Workplace Drug Testing Programs and establishes standards for certification of laboratories engaged in drug testing for federal agencies. Using data obtained from the Federal Workplace Drug Testing Programs and HHS-certified laboratories, the Department estimates that 275,000 urine specimens are tested annually by federal agencies.

As required, HHS originally published the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Guidelines) in the **Federal Register** (FR) on April 11, 1988 (53 FR 11979). SAMHSA subsequently revised the Guidelines on June 9, 1994 (59 FR 29908), September 30, 1997 (62 FR 51118), November 13, 1998 (63 FR 63483), April 13, 2004 (69 FR 19644), and November 25, 2008 (73 FR 71858). SAMHSA published the renamed Mandatory Guidelines for Federal Workplace Drug Testing Programs using UrMG on January 23, 2017 (82 FR 7920), and the first Mandatory Guidelines for Federal Workplace Drug Testing Programs using OFMG on October 25, 2019 (84 FR 57754). SAMHSA published the current UrMG (88 FR 70768) and current OFMG (88 FR 70814) on October 12, 2023.

Proposed Revisions to the Guidelines

This preamble describes the proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs using UrMG, and the rationale for the changes.

Subpart A—Applicability

Section 1.5 defines terms used in the UrMG. The Department has added terms and revised definitions in this section in accordance with proposed changes to these Guidelines.

The Department has deleted “Gender Identity” (*i.e.*, term and definition) to

enhance the clarity of direct observed collection procedures.

The Department updated the definition of “Laboratory” clarifying that, in addition to certifying laboratories to conduct all required testing of primary (A) and split (B) specimens, the Department may certify laboratories that test split (B) specimens only and/or conduct additional drug or specimen validity tests for primary and split specimens in accordance with these Mandatory Guidelines.

The Department edited the definition of “Negative Result” for clarity.

The Department edited the definition of “Substituted Specimen” to refer to a test for an HHS-authorized biomarker rather than specifically referring to the Biomarker Testing Panel, to reflect the Department’s review and approval process for an HHS-certified test facility to implement testing for a biomarker for use in Federal workplace drug testing programs.

Section 1.7 describes the circumstances that constitute a refusal to test. The Department provided additional examples for clarity.

Subpart B—Urine Specimens

Section 2.2 describes the circumstances under which a urine specimen may be collected. The Department reviewed and revised Section 2.2(a) and other wording in the current UrMG to clarify that pre-employment tests are performed for all individuals applying for a testing designated position, including federal agency employees.

Subpart C—Urine Specimen Tests

Section 3.1 describes the tests that are conducted on a urine specimen. The Department revised Section 3.2 to address when a specimen may be tested for drugs other than those in the drug testing panel and inserted a new Section 3.3 to describe the process for an HHS-certified laboratory or IITF to obtain HHS approval to test for a biomarker other than those in the biomarker testing panel. The Department renumbered subsequent items in Section 3 accordingly.

Section 3.5 describes the publication of drug and biomarker testing panels with analytes and cutoffs for urine. The Department removed the drug testing panel from the UrMG and deleted the requirement to publish the Authorized Drug Testing Panels annually. HHS will publish a FR Notice when drug and/or biomarker testing panels are changed.

Subpart D—Collectors

Section 4.4 describes requirements for an observer for a direct observed

collection. The Department revised item b to refer to the sex of the observer and donor to enhance the clarity of direct observed collection procedures.

Subpart H—Urine Specimen Collection Procedure

Section 8.1 describes privacy requirements for urine collection. The Department revised item b to refer to the sex of the observer and donor to enhance the clarity of direct observed collection procedures.

The Department reworded item c in Section 8.8 for clarity and to use the same wording in the UrMG and OFMG.

The Department revised the language in item 8.9(a)(2) to remove the word “medical,” because there may be a legitimate non-medical explanation for an invalid result.

Section 8.10 describes how a direct observed collection is conducted and Section 8.12 describes how a monitored collection is conducted. The Department revised wording in both sections to refer to the sex of the observer and donor to clarify direct observation collection procedures.

Subpart I—HHS Certification of Laboratories and IITFs

The Department revised the language in item 9.5(a)(1) to refer to the drug testing panel rather than “drug classes listed in the drug testing panel.”

Section 9.6 describes National Laboratory Certification Program (NLCP) performance testing (PT) requirements for an applicant urine laboratory and Section 9.7 describes PT requirements for an HHS-certified urine laboratory. The Department reworded item a.3 in both sections to clarify that PT criteria for initial drug test results are for applicant laboratories that will conduct initial drug tests.

Subpart K—Laboratory

Section 11.12 describes the initial drug test batch quality control requirements for a urine laboratory. The Department revised item b to apply to the controls in each initial drug test batch rather than to calibrators and controls and reduced the required percentage of controls from 10 percent to 4 percent of the total controls and specimens in the batch. (The same changes were made for IITFs in Section 12.)

Section 11.18 describes the requirements for urine laboratory specimen validity tests. The Department added wording to this section for clarity as follows: (1) added an introductory sentence referencing the required urine specimen validity tests in Section 3.1(c) and optional specimen validity tests in

Sections 3.1(d) and 3.6; (2) added an item a with the requirement for an invalid, adulterated, or substituted result to be based on an initial specimen validity test on one aliquot and a confirmatory specimen validity test on a second aliquot, (3) added an item b with the current requirement for controls to be analyzed concurrently with specimens, and (4) added an item h with quality control requirements for specimen validity tests other than those specified in preceding items. Other items were renamed or renumbered accordingly.

Item 11.18(e)(4)(v) was edited to reflect the invalid cutoff change from pH 9.0 to 9.5. As described below, the Department based this change on a thorough review of current information.

Currently, specimens with pH ≥ 9.0 must undergo laboratory confirmatory testing for pH and those with reported pH results ≥ 9.0 and ≤ 9.5 must undergo MRO review for possible explanations for the elevated pH. Specimens without a legitimate explanation and specimens requiring a valid negative result (*i.e.*, pre-employment, return-to-duty, or follow-up test) must be recollected. The additional testing, review, and recollections are a significant burden to HHS-certified laboratories, MROs, and federal agencies that does not result in identifying additional adulterated specimens.

Research on time and temperature changes in urine specimens and effects of pH on drug concentrations in urine were presented at the December 2024 meeting of SAMHSA’s Drug Testing Advisory Board. The data presented was sourced from HHS-certified laboratories’ invalid pH demographics, peer reviewed literature, and NLCP applied studies presented at scientific meetings after peer review of the abstracts. These data show that: (1) extended time at high temperature after collection can cause urine pH in the acceptable range to rise to 9.1 to 9.3; (2) there is a cyclical nature to the incidence of specimens in the pH range of 9.0 to 9.5 corresponding to summer months; (3) the incidence of specimens in pH range 9.0 to 9.5 is ~0.2 percent (*e.g.*, approximately 15,000 specimens/year); and (4) pH > 9.5 does not occur due to elevated temperature and increased shipping time.

Regarding the effect of elevated pH on positive drug concentrations, three analytes (*i.e.*, benzoylecgonine, phencyclidine, and 6-acetylmorphine) were identified as susceptible to changes in concentration due to elevated pH. Drug loss over a typical shipping time (*i.e.*, 1 to 3 days) ranged from 13 percent for benzoylecgonine to 58 percent for 6-acetylmorphine. There

was no difference in the loss of drug at pH 9.0 to 9.5 and pH of 9.5 to 10.0 for benzoylecgonine and phencyclidine; however, significant losses of 6-acetylmorphine occurred at pH as low as 8.0. The Department also reviewed information on primary (A) and split (B) specimens with inconsistent concentrations of these three analytes. None of these specimens had a pH $\geq$ 9.0.

Section 11.19 describes requirements for an HHS-certified laboratory to report a test result. The Department revised item 11.19(h)(1) to state that an MRO may authorize a specimen with an invalid result based on creatinine and specific gravity to be tested for an HHS-authorized biomarker to determine substitution. The Department revised item 11.19(g) to require the laboratory to contact the MRO for authorization before conducting testing for the additional biomarker or sending the specimen to another certified laboratory for the additional test.

Subpart L—IITF

Section 12.11 describes the initial drug test batch quality control requirements for an IITF. The Department revised item b to apply to the controls in each initial drug test batch rather than to calibrators and controls and reduced the required percentage of controls from 10 percent to 4 percent of the total controls and specimen in the batch. (The same changes were made for laboratories in Section 11.)

Section 12.14 describes the requirements for IITF specimen validity tests.

The Department added wording to this section for clarity as follows: (1) added an introductory sentence referencing the required IITF specimen validity tests in Section 3.1(c) and optional specimen validity tests in Sections 3.1(d); and (2) added an item a with the current requirement for controls to be analyzed concurrently with specimens. Other items were renamed accordingly.

The Department edited item 12.14(d)(1) and (2) consistent with the revised invalid specimen criteria (*i.e.*, cutoff change from pH 9.0 to 9.5).

The Department edited wording in item 12.21 regarding IITF records available to a Federal applicant or employee to be the same as section 11.24 regarding laboratory records.

Subpart M—MRO

Section 13.5 describes MRO actions when reviewing a urine specimen's test results.

The Department revised item f to delete MRO action for invalid results

based on a pH of 9.0 to 9.5, consistent with the revised invalid specimen criteria (*i.e.*, cutoff change from pH 9.0 to 9.5). The Department also edited wording in this section to address different MRO actions to be taken for invalid specimens depending on the reason for the test.

Section 13.6 describes MRO action when the collector reports that the donor did not provide a sufficient amount of urine for a drug test. The Department has reviewed and revised the previous wording in Section 13.6(b) to clarify different MRO actions to be taken for invalid specimens depending on the reason for the test.

Subpart N—Split Specimen Tests

Section 14.1 describes when a split (B) urine specimen may be tested. The Department has revised item 14.1(c) to clarify MRO action when a split specimen cannot be tested by a second laboratory because (1) there is no split specimen or the specimen has insufficient volume for testing), (2) the primary specimen was reported as adulterated and there is no second HHS-certified laboratory to test the split specimen for the same adulterant; or (3) the primary specimen was reported as substituted based on a biomarker, and there is no second HHS-certified laboratory to test the split specimen (*i.e.*, using the same or a different biomarker test).

Section 14.4 describes how an HHS-certified laboratory tests a split (B) urine specimen when the primary (A) specimen was reported substituted. The Department has renamed and renumbered items in this section. Item 14.4(b) addresses testing of a split specimen when the primary specimen was reported substituted based on biomarker testing. The Department has revised this section to allow the split testing laboratory to test for any HHS-authorized biomarker. It is not necessary to test the split specimen for the same biomarker to reconfirm the primary (A) specimen's substituted result.

Section 14.6 describes action an MRO takes after receiving the split (B) urine specimen result from the split testing laboratory. The Department has edited and reorganized this section for clarity and to describe these revised requirements:

- When the split laboratory has failed to reconfirm a single or all drug positive results and reported the specimen as adulterated and the primary laboratory cannot perform the test for that adulterant: the MRO directs testing at another HHS-certified laboratory.
- When the split laboratory has failed to reconfirm a single or all drug positive

results and reported the specimen as substituted and the primary laboratory cannot perform a biomarker test: the MRO directs testing at another HHS-certified laboratory. It is not necessary to test the primary specimen for the same biomarker to reconfirm the split specimen's substituted result.

The Department also removed the requirement for the MRO to contact the HHS office responsible for coordination of the drug-free workplace program regarding the test results throughout this section.

General Revisions

In addition to the proposed changes described by subpart and section above, the Department has edited the UrMG to address proposed changes and has reworded some items for clarity (*e.g.*, referring to “donors” rather than “employees” or “applicants”) and/or for consistency with the OFMG or to apply to any authorized specimen type.

Impact of These Guidelines on Government Regulated Industries

The proposed revised Guidelines may impact the Department of Transportation and Nuclear Regulatory Commission regulated industries depending on these agencies' decisions to incorporate the final UrMG revisions into their programs under their own authority.

Costs and Benefits

Costs

The proposed UrMG revisions are not expected to increase current stakeholder costs. There will be some administrative costs for HHS-certified laboratories and MROs associated with the change in invalid specimen criteria (*i.e.*, pH cutoff raised from 9.0 to 9.5; see Sections 11.18 and 12.14). However, the time and labor savings from this change are expected to greatly exceed these one-time costs.

Benefits

As noted above, laboratories and MROs will incur some initial costs for changing the pH invalid test cutoff; however, this change will benefit laboratories, MROs, and Federal agencies. Currently, a large number of specimens are reported as invalid based on pH between 9.0 and 9.5, especially in summer months. The reduction in invalid specimens due to the cutoff change will reduce the numbers of required confirmatory pH tests, MRO interviews and investigations, and specimen recollections.

The proposed revision to quality control requirements for initial drug test batches in Section 11.11(b) will reduce laboratory burden and expense while

maintaining quality. The Department has lowered the percentage of controls in each initial drug test batch from 10 percent to 4 percent of the total controls and specimens in the batch. This will reduce time, labor, and material costs (e.g., purchasing, initial verification, batch review, monitoring control results). Initial drug testing is used to report specimens as negative; specimens with a positive initial drug test are reflexed to confirmatory testing. The Department has maintained the 10 percent control requirement for confirmatory test batches.

Other UrMG revisions that will reduce stakeholder burden include those related to biomarker testing which are expected to lead to definitive results and reduce the need for specimen recollection. These include changes allowing an MRO to authorize testing for a biomarker for a specimen with an invalid result based on creatinine and specific gravity (Section 11.19) and allowing a split testing laboratory to use any HHS-authorized biomarker test to reconfirm substitution based on a biomarker test, rather than requiring the same biomarker test used for the primary specimen (Section 14.1). These revisions also strengthen the federal government's ability to identify illicit drug use and donor attempts to subvert drug tests.

Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The title and description of the collected information and respondent description are shown in the following paragraphs with an estimate of the annual reporting, disclosure, and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of HHS's functions, including whether the information will have practical utility; (2) evaluate the

accuracy of HHS'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.

Title: The Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine

Information Collection/Record Keeping Requirements

The information collection requirements (*i.e.*, reporting and recordkeeping) in the current Guidelines, which establish the scientific and technical guidelines for Federal Workplace Drug Testing Programs and establish standards for certification of laboratories engaged in urine drug testing for federal agencies under authority of 5 U.S.C. 7301 and Executive Order 12564, are approved by the Office of Management and Budget (OMB) under control number 0930–0158. The Federal Drug Testing Custody and Control Form (Federal CCF) used to document the collection and chain of custody of urine and oral fluid specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination; the National Laboratory Certification Program (NLCP) application; the NLCP Laboratory Information Checklist; and recordkeeping requirements in the current Guidelines, as approved under control number 0930–0158, will remain in effect.

In support of the Government Paperwork Reduction Act, the Department revised the Federal CCF to enable its use as an electronic form (78 FR 42091, July 15, 2013) and developed requirements and oversight procedures to ensure that HHS-certified test facilities and other service providers (e.g., collection sites, MROs) using an electronic version of the Federal CCF (ECCF) maintain the accuracy, security, and confidentiality of electronic drug test information. Before a Federal ECCF can be used for Federal agency

specimens, HHS-certified test facilities must submit detailed information and proposed standard operating procedures (SOPs) to the NLCP for SAMHSA review and approval and undergo an NLCP inspection focused on the proposed ECCF.

Since 2013, SAMHSA has encouraged the use of Federal ECCFs and other electronic processes in HHS-certified test facilities, when practicable, for federally regulated testing operations. In accordance with Section 8108(a) of the SUPPORT for Patients and Communities Act, SAMHSA has set a deadline of August 31, 2026, for all HHS-certified laboratories to submit a request for approval of an electronic (digital) Federal CCF. To assist all HHS-certified laboratories, SAMHSA has implemented an ECCF Recognition Program to recognize ECCF systems that meet program requirements and can be used by any HHS-certified laboratory or IITF. This program is expected to facilitate the process for HHS-certified test facilities seeking SAMHSA approval to use an ECCF and enable all HHS-certified test facilities (regardless of size) to meet the August 31, 2026, deadline for a digital ECCF submission.

Description: The Mandatory Guidelines establish the scientific and technical guidelines for federal drug testing programs and establish standards for certification of laboratories engaged in drug testing for federal agencies under authority of Public Law 100–71, 5 U.S.C. 7301 note, and Executive Order No. 12564. Federal drug testing programs test applicants for safety-sensitive positions, individuals involved in accidents, individuals tested for cause, and random testing of employees in safety-sensitive positions.

Description of Respondents: Individuals or households, businesses, or other-for-profit and not-for-profit institutions.

The burden estimates in the tables below are based on the following number of respondents: 38,000 donors who apply for employment or are employed in testing designated positions, 100 collectors, 20 urine specimen testing laboratories, 1 IITF, and 100 MROs.

Estimate of Annual Reporting Burden

BILLING CODE 4162–20–P

Section	Purpose	No. of Respondents	Responses/ Respondent	Hours/ Response	Total Hours
9.2(a)(1)	Laboratory or IITF required to submit application for certification	10	1	3	30
9.12(a)(3)	Materials to submit to become an HHS inspector	10	1	2	20
11.3	Laboratory submits qualifications of responsible person (RP) to HHS	10	1	2	20
11.4(c)	Laboratory submits information to HHS on new RP or alternate RP	10	1	2	20
11.22	Specifications for laboratory semiannual statistical report of test results to each federal agency	10	5	0.5	25
12.3	IITF submits qualifications of RT to HHS	1	1	1	1

12.4(c)	IITF submits information to HHS on new RT or alternate RT	1	1	1	1
12.19	Specifications for IITF semiannual statistical report of test results to each federal agency	1	1	1	1
13.8 and 14.7	Specifies that MRO must report all verified primary and split specimen test results to the federal agency	100	14	0.05 (3 min)	70
13.11	Specifications for MRO semiannual report to the Secretary or designated representative for federal agency specimen results that were laboratory-positive and MRO-verified negative	100	2	0.5	100
16.1(b) and 16.5(a)	Specifies content of request for informal review of	1	1	3	3

	suspension/proposed revocation of certification				
16.4	Specifies information appellant provides in first written submission when laboratory suspension/revocation is proposed	1	1	0.5	0.5
16.6	Requires appellant to notify reviewing official of resolution status at end of abeyance period	1	1	0.5	0.5
16.7(a)	Specifies contents of appellant submission for review	1	1	50	50
16.9(a)	Specifies content of appellant request for expedited review of suspension or proposed revocation	1	1	3	3
16.9(c)	Specifies contents of review file and briefs	1	1	50	50
TOTAL		259			395

The following reporting requirements are also in the proposed Guidelines, but have not been addressed in the above reporting burden table: collector must report any unusual donor behavior or refusal to participate in the collection process on the Federal CCF (Sections 1.8, 8.9); collector annotates the Federal CCF when a sample is a blind sample

(Section 10.3(a)); MRO notifies the federal agency and HHS when an error occurs on a blind sample (Section 10.4(d)); and Sections 13.6 and 13.7 describe the actions an MRO takes for the medical evaluation of a donor who cannot provide a urine specimen. SAMHSA has not calculated a separate reporting burden for these requirements

because they are included in the burden hours estimated for collectors to complete Federal CCFs and for MROs to report results to federal agencies.

Estimate of Annual Disclosure Burden

BILLING CODE 4162-20-P

Section	Purpose	No. of Respondents	Responses/ Respondent	Hours/ Response	Total Hours
8.3(a), 8.5(f)(2) (iii), 8.6(b)(2)	Collector must contact federal agency point of contact	100	1	0.05 (3 min)	5
11.23, 11.24	Information on drug test that laboratory must provide to federal agency upon request or to donor through MRO	20	10	3	600
12.20, 12.21	Information on drug test that IITF must provide to federal agency upon request or to donor through MRO	1	1	1	1
13.9(b)	MRO must inform donor of right to request split specimen test when a positive, adulterated, or substituted result is reported	100	14	3	4,200
TOTAL		221			4,806

The following disclosure requirements are also included in the proposed Guidelines but have not been addressed in the above disclosure burden table: the collector must explain the basic collection procedure to the

donor and answer any questions (Section 8.3(e) and (g)). SAMHSA believes having the collector explain the collection procedure to the donor and answer any questions is a standard

business practice and not a disclosure burden.

Estimate of Annual Recordkeeping Burden

BILLING CODE 4162-20-P

Section	Purpose	No. of Respondents	Responses/ Respondent	Hours/ Response	Total Hours
8.3, 8.5, 8.8	Collector completes Federal CCF for specimen collected	100	380	0.07 (4 min)	2,660
8.8(d) & (f)	Donor initials specimen labels/seals and signs statement on the Federal CCF	38,000	1	0.08 (5 min)	3,040
11.8(a) & 11.19	Laboratory completes Federal CCF upon receipt of specimen and before reporting result	20	1,520	0.05 (3 min)	1,520
12.8(a) & 12.15	IITF completes Federal CCF upon receipt of specimen and before reporting result	1	1	1	1
13.4(d) (4), 13.8 (c), 14.7 (c)	MRO completes Federal CCF before reporting the primary	100	380	0.05 (3 min)	1,900

	or split specimen result				
14.1(b)	MRO documents donor's request to have split specimen tested	100	2	0.05 (3 min)	10
TOTAL		38,321			9,131

BILLING CODE 4162-20-C

The proposed Guidelines contain several recordkeeping requirements that SAMHSA considers not to be an additional recordkeeping burden. In subpart D, a trainer is required to document the training of an individual to be a collector (Section 4.3(a)(3)) and the documentation must be maintained in the collector's training file (Section 4.3(c)). SAMHSA believes this training documentation is common practice and is not considered an additional burden. In subpart F, if a collector uses an incorrect form to collect a federal agency specimen, the collector is required to provide a statement (Section 6.2(b)) explaining why an incorrect form was used to document collecting the specimen. SAMHSA believes this is an extremely infrequent occurrence and does not create a significant additional recordkeeping burden. Subpart H (Sections 8.4(c), 8.5(d)(2), 8.5 (e)(1) and (2)) requires collectors to enter any information on the Federal CCF of any unusual findings during the urine specimen collection procedure. These recordkeeping requirements are an integral part of the collection procedure and are essential to documenting the chain of custody for the specimens collected. The burden for these entries is included in the recordkeeping burden estimated to complete the Federal CCF and is, therefore, not considered an additional recordkeeping burden. Subpart K describes a number of recordkeeping requirements for laboratories associated with their testing procedures, maintaining chain of custody, and keeping records (*i.e.*, Sections 11.1(a) and (d); 11.2(b), (c), and (d); 11.6(b); 11.7(c); 11.8; 11.11(a); 11.14(a); 11.17; 11.21(a), (b), and (c);

11.22; 11.23(a) and 11.24). These recordkeeping requirements are necessary for any laboratory to conduct forensic drug testing and to ensure the scientific supportability of the test results. Therefore, they are considered to be standard business practice and are not considered a burden for this analysis.

Thus, the total annual response burden associated with the testing of urine specimens by the laboratories and IITFs is estimated to be 14,332 hours (that is, the sum of the total hours from the above tables). This burden has decreased from the 2023 estimate of 14,862 hours. The estimated burden hours were also decreased for testing of oral fluid specimens by laboratories, as described in the OFMG. The final estimate after adjusting the total 1,686,483 hours currently approved by OMB under control number 0930-0158 is 1,684,363 hours, reflecting the decrease in burden hours required to perform the tasks outlined in these updated mandatory guidelines. The Department requests comments on the change in burden hours.

As required by section 3507(d) of the Paperwork Reduction Act, the Secretary has submitted a copy of these proposed Guidelines to OMB for its review.

OMB is required to make a decision concerning the collection of information contained in these proposed Guidelines between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to HHS on the proposed Guidelines.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW, Washington, DC 20502, Attn: Desk Officer for SAMHSA. Because of delays in receipt of mail, comments may also be sent to 202-395-6974 (fax).

Robert F. Kennedy, Jr.,
Secretary.

For the reasons discussed above, the Department of Health and Human Services proposes to amend the Mandatory Guideline to read as follows:

Mandatory Guidelines for Federal Workplace Drug Testing Programs Using Urine

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- 1.1 To whom do these Guidelines apply?
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- 1.3 How does a Federal agency request a change from these Guidelines?
- 1.4 How are these Guidelines revised?
- 1.5 What do the terms used in these Guidelines mean?
- 1.6 What is an agency required to do to protect workplace drug testing records?
- 1.7 What is a refusal to take a federally regulated drug test?
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- 11.14 What must an HHS-certified laboratory do to validate a confirmatory drug test?
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- 12.5 What qualifications must an individual have to certify a result reported by an HHS-certified IITF?
- 12.6 What qualifications and training must other personnel of an HHS-certified IITF have?
- 12.7 What security measures must an HHS-certified IITF maintain?
- 12.8 What are the IITF chain of custody requirements for specimens and aliquots?
- 12.9 What are the requirements for an initial drug test?
- 12.10 What must an HHS-certified IITF do to validate an initial drug test?
- 12.11 What are the batch quality control requirements when conducting an initial drug test?
- 12.12 What are the analytical and quality control requirements for conducting specimen validity tests?
- 12.13 What must an HHS-certified IITF do to validate a specimen validity test?
- 12.14 What are the requirements for conducting each specimen validity test?
- 12.15 What are the requirements for an HHS-certified IITF to report a test result?
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- 12.17 How long must an HHS-certified IITF retain a specimen?
- 12.18 How long must an HHS-certified IITF retain records?
- 12.19 What statistical summary reports must an HHS-certified IITF provide?
- 12.20 What HHS-certified IITF information is available to a federal agency?

- 12.21 What HHS-certified IITF information is available to a federal applicant or employee?
- 12.22 What types of relationships are prohibited between an HHS-certified IITF and an MRO?
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- 13.4 What are the responsibilities of an MRO?
- 13.5 What must an MRO do when reviewing a urine specimen's test results?
- 13.6 What action does the MRO take when the collector reports that the donor did not provide a sufficient amount of urine for a drug test?
- 13.7 What happens when an individual is unable to provide a sufficient amount of urine for a federal agency applicant/pre-employment test, a follow-up test, or a return-to-duty test because of a permanent or long-term medical condition?
- 13.8 How does an MRO report a primary (A) specimen test result to an agency?
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- 13.11 What reports must an MRO provide to the Secretary for urine testing?
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- 15.2 What discrepancies require an HHS-certified laboratory or an HHS-certified IITF to report a specimen as rejected for testing unless the discrepancy is corrected?
- 15.3 What discrepancies are not sufficient to require an HHS-certified laboratory or an HHS-certified IITF to reject a urine specimen for testing or an MRO to cancel a test?
- 15.4 What discrepancies may require an MRO to cancel a test?

Subpart P—Laboratory or IITF Suspension/Revocation Procedures

- 16.1 When may the HHS certification of a laboratory or IITF be suspended?
- 16.2 What definitions are used for this subpart?
- 16.3 Are there any limitations on issues subject to review?
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- 16.5 When must a request for informal review be submitted?
- 16.6 What is an abeyance agreement?
- 16.7 What procedures are used to prepare the review file and written argument?
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- 16.9 Are there expedited procedures for review of immediate suspension?
- 16.10 Are any types of communications prohibited?
- 16.11 How are communications transmitted by the reviewing official?
- 16.12 What are the authority and responsibilities of the reviewing official?
- 16.13 What administrative records are maintained?
- 16.14 What are the requirements for a written decision?
- 16.15 Is there a review of the final administrative action?

Subpart A—Applicability

Section 1.1 To whom do these Guidelines apply?

- (a) These Guidelines apply to:
 - (1) Executive agencies as defined in 5 U.S.C. 105;
 - (2) The Uniformed Services, as defined in 5 U.S.C. 2101(3), but excluding the Armed Forces as defined in 5 U.S.C. 2101(2);
 - (3) Any other employing unit or authority of the federal government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches; and
 - (4) The Intelligence Community, as defined by Executive Order 12333, is subject to these Guidelines only to the extent agreed to by the head of the affected agency;
 - (5) Laboratories and instrumented initial test facilities (IITF) that provide drug testing services to the federal agencies;

(6) Collectors who provide specimen collection services to the federal agencies; and

(7) Medical Review Officers (MRO) who provide drug testing reviews and interpretation of results services to the federal agencies.

(b) These Guidelines do not apply to drug testing under authority other than Executive Order 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

Section 1.2 Who is responsible for developing and implementing these Guidelines?

(a) Executive Order 12564 and Public Law 100–71 require the Department of Health and Human Services (HHS) to establish scientific and technical guidelines for federal workplace drug testing programs.

(b) The Secretary has the responsibility to implement these Guidelines.

Section 1.3 How does a federal agency request a change from these Guidelines?

(a) Each federal agency must ensure that its workplace drug testing program complies with the provisions of these Guidelines unless a waiver has been obtained from the Secretary.

(b) To obtain a waiver, a federal agency must submit a written request to the Secretary that describes the specific change for which a waiver is sought and a detailed justification for the change.

Section 1.4 How are these Guidelines revised?

(a) To ensure the full reliability and accuracy of specimen tests, the accurate reporting of test results, and the integrity and efficacy of federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology.

(b) Revisions to these Guidelines will be published in final as a notification in the **Federal Register**.

Section 1.5 What do the terms used in these Guidelines mean?

The following definitions are adopted:

Accessioner. The individual who signs the Federal Drug Testing Custody and Control Form at the time of specimen receipt at the HHS-certified laboratory or (for urine) the HHS-certified IITF.

Adulterated Specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an

abnormal concentration of a normal constituent (e.g., nitrite in urine).

Aliquot. A portion of a specimen used for testing.

Alternate Responsible Person. The person who assumes professional, organizational, educational, and administrative responsibility for the day-to-day management of the HHS-certified laboratory when the responsible person is unable to fulfill these obligations.

Alternate Responsible Technician. The person who assumes professional, organizational, educational, and administrative responsibility for the day-to-day management of the HHS-certified IITF when the responsible technician is unable to fulfill these obligations.

Alternate Technology Initial Drug Test. An initial drug test using technology other than immunoassay to differentiate negative specimens from those requiring further testing.

Batch. A number of specimens or aliquots handled concurrently as a group.

Biomarker. An endogenous substance used to validate a biological specimen.

Biomarker Testing Panel. The panel published in the **Federal Register** that includes the biomarkers authorized for testing, with analytes and cutoffs for initial and confirmatory biomarker tests, as described under Section 3.5.

Blind Sample. A sample submitted to an HHS-certified test facility for quality assurance purposes, with a fictitious identifier, so that the test facility cannot distinguish it from a donor specimen.

Calibrator. A sample of known content and analyte concentration prepared in the appropriate matrix used to define expected outcomes of a testing procedure. The test result of the calibrator is verified to be within established limits prior to use.

Cancelled Test. The result reported by the MRO to the federal agency when a specimen has been reported to the MRO as an invalid result (and the donor has no legitimate explanation) or the specimen has been rejected for testing, when a split specimen fails to reconfirm, or when the MRO determines that a fatal flaw or unrecovered correctable flaw exists in the forensic records (as described in Sections 15.1 and 15.2).

Carryover. The effect that occurs when a sample result (e.g., drug concentration) is affected by a preceding sample during the preparation or analysis of a sample.

Certifying Scientist (CS). The individual responsible for verifying the chain of custody and scientific

reliability of a test result reported by an HHS-certified laboratory.

Certifying Technician (CT). The individual responsible for verifying the chain of custody and scientific reliability of negative, rejected for testing, and (for urine) negative/dilute results reported by an HHS-certified laboratory or (for urine) an HHS-certified IITF.

Chain of Custody (COC) Procedures. Procedures that document the integrity of each specimen or aliquot from the point of collection to final disposition.

Chain of Custody Documents. Forms used to document the control and security of the specimen and all aliquots. The document may account for an individual specimen, aliquot, or batch of specimens/aliquots and must include the name and signature of each individual who handled the specimen(s) or aliquot(s) and the date and purpose of the handling.

Collection Container. A receptacle used to collect a donor's drug test specimen.

Collection Site. The location where specimens are collected.

Collector. A person trained to instruct and assist a donor in providing a specimen.

Confirmatory Drug Test. A second analytical procedure performed on a separate aliquot of a specimen to identify and quantify a specific drug or drug metabolite.

Confirmatory Specimen Validity Test. A second test performed on a separate aliquot of a specimen to further support an initial specimen validity test result.

Control. A sample used to evaluate whether an analytical procedure or test is operating within predefined tolerance limits.

Cutoff. The analytical value (e.g., drug, drug metabolite, or biomarker concentration) used as the decision point to determine a result (e.g., negative, positive, adulterated, invalid, or substituted) or the need for further testing.

Dilute Specimen. A urine specimen with creatinine and specific gravity values that are lower than expected but are still within the physiologically producible ranges of human urine.

Donor. The individual from whom a specimen is collected.

Drug Testing Panel. The panel published in the **Federal Register** that includes the drugs authorized for testing, with analytes and cutoffs for initial and confirmatory drug tests, as described under Section 3.5.

External Service Provider. An independent entity that performs services related to federal workplace drug testing on behalf of a federal

agency, a collector/collection site, an HHS-certified laboratory, a Medical Review Officer (MRO), or (for urine) an HHS-certified Instrumented Initial Test Facility (IITF).

Failed to Reconfirm. The result reported for a split (B) specimen when a second HHS-certified laboratory is unable to corroborate the result reported for the primary (A) specimen.

Federal Drug Testing Custody and Control Form (Federal CCF). The Office of Management and Budget (OMB) approved form that is used to document the collection and chain of custody of a specimen from the time the specimen is collected until it is received by the test facility (*i.e.*, HHS-certified laboratory or, for urine, HHS-certified IITF). It may be a paper (hardcopy), electronic (digital), or combination electronic and paper format (hybrid). The form may also be used to report the test result to the Medical Review Officer.

HHS. The Department of Health and Human Services.

Initial Drug Test. An analysis used to differentiate negative specimens from those requiring further testing.

Initial Specimen Validity Test. The first analysis used to determine if a specimen is adulterated, invalid, substituted, or (for urine) dilute.

Instrumented Initial Test Facility (IITF). A permanent location where (for urine) initial testing, reporting of results, and recordkeeping are performed under the supervision of a responsible technician.

Invalid Result. The result reported by an HHS-certified laboratory in accordance with the criteria established in Section 3.10 when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. A permanent location where drug testing, reporting of results, and recordkeeping are performed under the supervision of a responsible person. In addition to certifying laboratories that conduct all required testing of primary (A) and split (B) specimens, HHS may certify a laboratory that tests split (B) specimens only and/or conducts additional drug or specimen validity tests for primary and split specimens in accordance with these Mandatory Guidelines.

Limit of Detection (LOD). The lowest concentration at which the analyte (*e.g.*, drug or drug metabolite) can be identified.

Limit of Quantification (LOQ). For quantitative assays, the lowest concentration at which the identity and concentration of the analyte (*e.g.*, drug or drug metabolite) can be accurately established.

Lot. A number of units of an item (*e.g.*, reagents, quality control material) manufactured from the same starting materials within a specified period of time for which the manufacturer ensures that the items have essentially the same performance characteristics and expiration date.

Medical Review Officer (MRO). A licensed physician who reviews, verifies, and reports a specimen test result to the federal agency.

Negative Result. The result reported by an HHS-certified laboratory or (for urine) an HHS-certified IITF when a specimen does not contain the analyte of interest (*i.e.*, drug and/or drug metabolite) or the concentration is less than the cutoff for the test.

Oral Fluid Specimen. An oral fluid specimen is collected from the donor's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands.

Oxidizing Adulterant. A substance that acts alone or in combination with other substances to oxidize drug or drug metabolites to prevent the detection of the drugs or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performance Testing (PT) Sample. A program-generated sample sent to a laboratory or (for urine) to an IITF to evaluate performance.

Positive Result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the confirmatory test cutoff.

Reconfirmed. The result reported for a split (B) specimen when the second HHS-certified laboratory corroborates the original result reported for the primary (A) specimen.

Rejected for Testing. The result reported by an HHS-certified laboratory or (for urine) HHS-certified IITF when no tests are performed on a specimen because of a fatal flaw or an unrecovered correctable error (see Sections 15.1 and 15.2).

Responsible Person (RP). The person who assumes professional, organizational, educational, and administrative responsibility for the day-to-day management of an HHS-certified laboratory.

Responsible Technician (RT). The person who assumes professional, organizational, educational, and administrative responsibility for the day-to-day management of an HHS-certified IITF.

Sample. A performance testing sample, calibrator or control used during testing, or a representative portion of a donor's specimen.

Secretary. The Secretary of the U.S. Department of Health and Human Services.

Specimen. Fluid or material collected from a donor at the collection site for the purpose of a drug test.

Split Specimen Collection (for Urine). A collection in which the specimen collected is divided into a primary (A) specimen and a split (B) specimen, which are independently sealed in the presence of the donor.

Standard. Reference material of known purity or a solution containing a reference material at a known concentration.

Substituted Specimen. A specimen that has been submitted in place of the donor's specimen, as evidenced by the absence of a biomarker or a biomarker concentration inconsistent with that established for a human specimen based on testing for an HHS-authorized biomarker or (for urine) creatinine and specific gravity values that are outside the physiologically producible ranges of human urine, in accordance with the criteria to report a specimen as substituted in Section 3.8.

Section 1.6 What is an agency required to do to protect workplace drug testing records?

Consistent with 5 U.S.C. 552a and 48 CFR 24.101 through 24.104, all agency contracts with laboratories, IITFs, collectors, and MROs must require that they comply with the Privacy Act, 5 U.S.C. 552a. In addition, the contracts must require compliance with employee access and confidentiality provisions of section 503 of Public Law 100–71. Each federal agency must establish a Privacy Act System of Records or modify an existing system or use any applicable Government-wide system of records to cover the records of workplace drug test results. All contracts and the Privacy Act System of Records must specifically require that workplace drug testing records be maintained and used with the highest regard for individual privacy.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (Rule), 45 CFR parts 160 and 164, subparts A and E, may be applicable to certain health care providers with whom a federal agency may contract. If a health care provider is a HIPAA covered entity, the provider must protect the individually identifiable health information it maintains in accordance with the requirements of the Rule, which includes not using or disclosing the information except as permitted by the Rule and ensuring there are reasonable

safeguards in place to protect the privacy of the information.

Section 1.7 What is a refusal to take a federally regulated drug test?

(a) A donor for a federally regulated drug test has refused to take a federally regulated drug test when he/she:

(1) Fails to appear for any test within a reasonable time, as determined by the federal agency, consistent with applicable agency regulations, after being directed to do so by the federal agency;

(2) Fails to remain at the collection site until the collection process is complete;

(3) Fails to provide a specimen (*i.e.*, urine or another authorized specimen type) for any drug test required by these Guidelines or federal agency regulations;

(4) In the case of a direct observed or monitored collection, fails to permit the observation or monitoring of his/her provision of a specimen when required as described in Sections 8.9 and 8.10;

(5) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no legitimate medical explanation for the failure as determined by the process described in Section 13.6;

(6) Fails or declines to participate in an alternate specimen collection (*e.g.*, oral fluid) as directed by the federal agency or collector (*i.e.*, as described in Section 8.6);

(7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process (*i.e.*, Section 13.6) or as directed by the federal agency. In the case of a federal agency applicant/pre-employment drug test, the donor is deemed to have refused to test on this basis only if the Federal agency applicant/pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;

(8) Fails to cooperate with any part of the testing process (*e.g.*, refuses to empty pockets when directed by the collector, disrupts the collection process, fails to wash hands after being directed to do so by the collector, does not consent to testing or withdraws consent for testing);

(9) For an observed collection, fails to follow the observer's instructions related to the collection process;

(10) Brings materials to the collection site for the purpose of adulterating, substituting, or diluting the specimen;

(11) Attempts to adulterate, substitute, or dilute the specimen;

(12) Possesses or wears a device intended to subvert or interfere with the collection process; or

(13) Admits to the collector or MRO that he/she has adulterated or substituted the specimen.

Section 1.8 What are the potential consequences for refusing to take a federally regulated drug test?

(a) A refusal to take a test may result in the initiation of disciplinary or adverse action for a federal employee, up to and including removal from federal employment. An applicant's refusal to take a pre-employment test may result in non-selection for federal employment.

(b) When a donor has refused to participate in a part of the collection process, including failing to appear in a reasonable time for any test, the collector must terminate the collection process and take action as described in Section 8.13. Required action includes immediately notifying the federal agency's designated representative by any means (*e.g.*, telephone, email, or secure facsimile [fax] machine) that ensures that the refusal notification is immediately received and, if a federal CCF has been initiated, documenting the refusal on the federal CCF, signing and dating the federal CCF, and sending all copies of the federal CCF to the federal agency's designated representative.

(c) When documenting a refusal to test during the verification process as described in Sections 13.4, 13.5, and 13.6, the MRO must complete the MRO copy of the federal CCF to include:

- (1) Checking the refusal to test box;
- (2) Providing a reason for the refusal in the remarks line; and
- (3) Signing and dating the MRO copy of the federal CCF.

Subpart B—Urine Specimens

Section 2.1 What type of specimen may be collected?

A federal agency may collect urine and/or an alternate specimen type for its workplace drug testing program. Only specimen types authorized by Mandatory Guidelines for Federal Workplace Drug Testing Programs may be collected. An agency using urine must follow these Guidelines.

Section 2.2 Under what circumstances may a urine specimen be collected?

A federal agency may collect a urine specimen for the following reasons:

- (a) Pre-employment test (*i.e.*, for all applicants including federal agency employees);
- (b) Random test;

- (c) Reasonable suspicion/cause test;
- (d) Post-accident test;
- (e) Return to duty test; or
- (f) Follow-up test.

Section 2.3 How is each urine specimen collected?

Each urine specimen is collected as a split specimen as described in Section 2.5.

Section 2.4 What volume of urine is collected?

A donor is expected to provide at least 45 mL of urine for a specimen.

Section 2.5 How does the collector split the urine specimen?

The collector pours at least 30 mL into a specimen bottle that is designated as A (primary) and then pours at least 15 mL into a specimen bottle that is designated as B (split).

Section 2.6 When may an entity or individual release a urine specimen?

Entities and individuals subject to these Guidelines under Section 1.1 may not release specimens collected pursuant to Executive Order 12564, Public Law 100–71, and these Guidelines to donors or their designees. Specimens also may not be released to any other entity or individual unless expressly authorized by these Guidelines or by applicable federal law. This section does not prohibit a donor's request to have a split (B) specimen tested in accordance with Section 13.9.

Subpart C—Urine Specimen Tests

Section 3.1 Which tests are conducted on a urine specimen?

A federal agency:

(a) Must ensure that each specimen is tested for marijuana and cocaine metabolites as provided in the drug testing panel described under Section 3.5;

(b) Is authorized to test each specimen for other Schedule I or II drugs as provided in the drug testing panel;

(c) Must ensure that the following specimen validity tests are conducted on each urine specimen:

- (1) Determine the creatinine concentration on every specimen;
- (2) Determine the specific gravity on every specimen for which the creatinine concentration is less than 20 mg/dL;
- (3) Determine the pH on every specimen; and
- (4) Perform one or more specimen validity tests for oxidizing adulterants on every specimen.

(d) Is authorized to test each specimen for one or more HHS-authorized biomarkers; and

(e) May perform additional testing if a specimen exhibits abnormal characteristics (e.g., unusual odor or color, semi-solid characteristics), causes reactions or responses characteristic of an adulterant during initial or confirmatory drug tests (e.g., non-recovery of internal standard, unusual response), or contains an unidentified substance that interferes with the confirmatory analysis.

Section 3.2 May a specimen be tested for drugs other than those in the drug testing panel?

A federal agency covered by these Guidelines may test their workplace specimens for the drugs listed in the drug testing panel and any other drugs listed in Schedule I or II of the Controlled Substances Act subject to the procedures listed in paragraphs (a) and (b) of this section.

(a) A federal agency may test a reasonable suspicion or post-accident specimen for additional Schedule I or II drugs not listed in the drug testing panel on a case-by-case basis. The agency must request the HHS-certified laboratory to test for the additional drug, include a justification to test a specific specimen for the drug, and ensure that the HHS-certified laboratory has the capability to test for the drug and has established properly validated initial and confirmatory analytical methods. If an initial test procedure is not available upon request for a suspected Schedule I or Schedule II drug, the federal agency can request an HHS-certified laboratory to test for the drug by analyzing two separate aliquots of the specimen in two separate testing batches using the confirmatory analytical method. Additionally, the split (B) specimen will be available for testing if the donor requests a retest at another HHS-certified laboratory.

(b) A federal agency must petition the Secretary in writing for approval to routinely test for any drug not listed in the drug testing panel described under Section 3.5. Such approval must be limited to the use of the appropriate science and technology and must not otherwise limit agency discretion to test for any drug tested under Section 3.2(a).

Section 3.3 May a specimen be tested for biomarkers other than those in the biomarker testing panel?

An HHS-certified laboratory or (for urine) IITF must obtain authorization from the Department before implementing testing for a biomarker for federal agency drug testing specimens. The Department may add the biomarker (i.e., initial and confirmatory test analytes and cutoffs) to the subsequent

biomarker testing panel published in the **Federal Register**.

A federal agency covered by these Guidelines may test their workplace specimens for any HHS-authorized biomarker routinely (see Section 3.1.d) or on a case-by-case basis (see Section 3.6).

Section 3.4 May any of the specimens be used for other purposes?

(a) Specimens collected pursuant to Executive Order 12564, Public Law 100–71, and these Guidelines must only be tested for drugs and to determine their validity in accordance with subpart C of these Guidelines. Use of specimens by donors, their designees, or any other entity, for other purposes (e.g., deoxyribonucleic acid, DNA, testing) is prohibited unless authorized in accordance with applicable federal law.

(b) These Guidelines are not intended to prohibit a federal agency specifically authorized by law to test a specimen for additional drugs in its workplace drug testing program.

Section 3.5 What are the drug and biomarker test analytes and cutoffs for urine?

The Secretary publishes the drug and biomarker test analytes and cutoffs (i.e., the “drug testing panel” and “biomarker testing panel”) for initial and confirmatory drug and biomarkers in the **Federal Register**.

(a) The drug testing panel includes drugs authorized for testing in federal workplace drug testing programs, with the required test analytes and cutoffs.

(b) The biomarker testing panel includes biomarkers authorized for testing in federal workplace drug testing programs, with the required test analytes and cutoffs.

(c) HHS-certified IITFs, HHS-certified laboratories, and Medical Review Officers must use the nomenclature (i.e., analyte names and abbreviations) published in the **Federal Register** with the drug and biomarker testing panels to report federal workplace drug test results.

Section 3.6 May an HHS-certified laboratory perform additional drug and/or specimen validity tests on a specimen at the request of the Medical Review Officer (MRO)?

An HHS-certified laboratory is authorized to perform additional drug and/or specimen validity tests on a case-by-case basis as necessary to provide information that the MRO would use to report a verified drug test result (e.g., tetrahydrocannabinol, specimen validity tests). An HHS-certified laboratory is not authorized to routinely

perform additional drug and/or specimen validity tests at the request of an MRO without prior authorization from the Secretary or designated HHS representative, with the exception of the determination of d,l stereoisomers of amphetamine and methamphetamine. All tests must meet appropriate validation and quality control requirements in accordance with these Guidelines.

Section 3.7 What criteria are used to report a urine specimen as adulterated?

An HHS-certified laboratory reports a primary (A) specimen as adulterated when:

(a) The pH is less than 4 or equal to or greater than 11 using either a pH meter or a colorimetric pH test for the initial test on the first aliquot and a pH meter for the confirmatory test on the second aliquot;

(b) The nitrite concentration is equal to or greater than 500 mcg/mL using either a nitrite colorimetric test or a general oxidant colorimetric test for the initial test on the first aliquot and a different confirmatory test (e.g., multi-wavelength spectrophotometry, ion chromatography, capillary electrophoresis) on the second aliquot;

(c) The presence of chromium (VI) is verified using either a general oxidant colorimetric test (with an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL) for the initial test on the first aliquot and a different confirmatory test (e.g., multi-wavelength spectrophotometry, ion chromatography, atomic absorption spectrophotometry, capillary electrophoresis, inductively coupled plasma-mass spectrometry) with the chromium (VI) concentration equal to or greater than the LOQ of the confirmatory test on the second aliquot;

(d) The presence of a halogen (e.g., chlorine from bleach, iodine, fluoride) is verified using either a general oxidant colorimetric test (with an equal to or greater than 200 mcg/mL nitrite-equivalent cutoff or an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff) or halogen colorimetric test (halogen concentration equal to or greater than the LOQ) for the initial test on the first aliquot and a different confirmatory test (e.g., multi-wavelength spectrophotometry, ion chromatography, inductively coupled plasma-mass spectrometry) with a specific halogen concentration equal to or greater than the LOQ of the confirmatory test on the second aliquot;

(e) The presence of glutaraldehyde is verified using either an aldehyde test (aldehyde present) or the characteristic immunoassay response on one or more drug immunoassay tests for the initial test on the first aliquot and a different confirmatory test (e.g., GC/MS) for the confirmatory test with the glutaraldehyde concentration equal to or greater than the LOQ of the analysis on the second aliquot;

(f) The presence of pyridine (pyridinium chlorochromate) is verified using either a general oxidant colorimetric test (with an equal to or greater than 200 mcg/mL nitrite-equivalent cutoff or an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL) for the initial test on the first aliquot and a different confirmatory test (e.g., GC/MS) for the confirmatory test with the pyridine concentration equal to or greater than the LOQ of the analysis on the second aliquot;

(g) The presence of a surfactant is verified by using a surfactant colorimetric test with an equal to or greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff for the initial test on the first aliquot and a different confirmatory test (e.g., multi-wavelength spectrophotometry) with an equal to or greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff on the second aliquot; or

(h) The presence of any other adulterant not specified in paragraphs (b) through (g) of this section is verified using an initial test on the first aliquot and a different confirmatory test on the second aliquot.

Section 3.8 What criteria are used to report a urine specimen as substituted?

An HHS-certified laboratory reports a primary (A) urine specimen as substituted when:

(a) The creatinine concentration is less than 2 mg/dL on both the initial and confirmatory creatinine tests on two separate aliquots (i.e., the same colorimetric test may be used to test both aliquots) and the specific gravity is less than or equal to 1.0010 or equal to or greater than 1.0200 on both the initial and confirmatory specific gravity tests on two separate aliquots (i.e., a refractometer is used to test both aliquots), or

(b) A biomarker is not detected or is present at a concentration inconsistent with that established for human urine for both the initial (first) test and the confirmatory (second) test on two

separate aliquots (i.e., using the HHS-authorized test analytes and cutoffs).

Section 3.9 What criteria are used to report a urine specimen as dilute?

A dilute result may be reported only in conjunction with the positive or negative drug test results for a specimen.

(a) An HHS-certified laboratory or an HHS-certified IITF reports a primary (A) specimen as dilute when the creatinine concentration is greater than 5 mg/dL but less than 20 mg/dL and the specific gravity is equal to or greater than 1.002 but less than 1.003 on a single aliquot.

(b) In addition, an HHS-certified laboratory reports a primary (A) specimen as dilute when the creatinine concentration is equal to or greater than 2 mg/dL but less than 20 mg/dL and the specific gravity is greater than 1.0010 but less than 1.0030.

Section 3.10 What criteria are used to report an invalid result for a urine specimen?

An HHS-certified laboratory reports a primary (A) specimen as an invalid result when:

(a) Inconsistent creatinine concentration and specific gravity results are obtained (i.e., the creatinine concentration is less than 2 mg/dL on both the initial and confirmatory creatinine tests and the specific gravity is greater than 1.0010 but less than 1.0200 on the initial and/or confirmatory specific gravity test, the specific gravity is less than or equal to 1.0010 on both the initial and confirmatory specific gravity tests and the creatinine concentration is equal to or greater than 2 mg/dL on either or both the initial or confirmatory creatinine tests);

(b) The pH is equal to or greater than 4 and less than 4.5 or equal to or greater than 9.5 and less than 11 using either a colorimetric pH test or pH meter for the initial test and a pH meter for the confirmatory test on two separate aliquots;

(c) The nitrite concentration is equal to or greater than 200 mcg/mL using a nitrite colorimetric test or equal to or greater than the equivalent of 200 mcg/mL nitrite using a general oxidant colorimetric test for both the initial (first) test and the second test or using either initial test and the nitrite concentration is equal to or greater than 200 mcg/mL but less than 500 mcg/mL for a different confirmatory test (e.g., multi-wavelength spectrophotometry, ion chromatography, capillary electrophoresis) on two separate aliquots;

(d) The possible presence of chromium (VI) is determined using the same chromium (VI) colorimetric test with a cutoff equal to or greater than 50 mcg/mL chromium (VI) for both the initial (first) test and the second test on two separate aliquots;

(e) The possible presence of a halogen (e.g., chlorine from bleach, iodine, fluoride) is determined using the same halogen colorimetric test with a cutoff equal to or greater than the LOQ for both the initial (first) test and the second test on two separate aliquots or relying on the odor of the specimen as the initial test;

(f) The possible presence of glutaraldehyde is determined by using the same aldehyde test (aldehyde present) or characteristic immunoassay response on one or more drug immunoassay tests for both the initial (first) test and the second test on two separate aliquots;

(g) The possible presence of an oxidizing adulterant is determined by using the same general oxidant colorimetric test (with an equal to or greater than 200 mcg/mL nitrite-equivalent cutoff, an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff, or a halogen concentration is equal to or greater than the LOQ) for both the initial (first) test and the second test on two separate aliquots;

(h) The possible presence of a surfactant is determined by using the same surfactant colorimetric test with an equal to greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff for both the initial (first) test and the second test on two separate aliquots or a foam/shake test for the initial test;

(i) Interference occurs on the initial drug tests on two separate aliquots (i.e., valid initial drug test results cannot be obtained);

(j) Interference with the confirmatory drug test occurs on two separate aliquots of the specimen and the laboratory is unable to identify the interfering substance;

(k) The physical appearance of the specimen (e.g., viscosity) is such that testing the specimen may damage the laboratory's instruments;

(l) The specimen has been tested and the appearances of the primary (A) and the split (B) specimens (e.g., color) are clearly different; or

(m) A specimen validity test (i.e., other than the tests listed above) on two separate aliquots of the specimen indicates that the specimen is not valid for testing.

Subpart D—Collectors*Section 4.1 Who may collect a urine specimen?*

(a) A collector who has been trained to collect urine specimens in accordance with these Guidelines.

(b) The immediate supervisor of a federal employee may only collect that employee's specimen when no other collector is available. The supervisor must be a trained collector.

(c) The hiring official of an applicant may only collect that applicant's specimen when no other collector is available. The hiring official must be a trained collector.

Section 4.2 Who may not collect a specimen?

(a) A federal agency employee who is in a testing designated position and subject to the federal agency drug testing rules must not be a collector for co-workers in the same testing pool or who work with that employee on a daily basis.

(b) A donor must not collect their own drug testing specimen.

(c) An employee working for an HHS-certified laboratory or IITF must not act as a collector if the employee could link the identity of the donor to the donor's drug test result.

(d) To avoid a potential conflict of interest, a collector must not be related to the donor (e.g., spouse, ex-spouse, relative) or be a personal friend of the donor (e.g., fiancée).

Section 4.3 What are the requirements to be a collector?

(a) An individual may serve as a collector if they fulfill the following conditions:

(1) Is knowledgeable about the collection procedure described in these Guidelines;

(2) Is knowledgeable about any guidance provided by the federal agency's drug-free workplace program and additional information provided by the Secretary relating to the collection procedure described in these Guidelines;

(3) Is trained and qualified to collect a urine specimen. Training must include the following:

(i) All steps necessary to complete a urine collection;

(ii) Completion and distribution of the federal CCF;

(iii) Problem collections;

(iv) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(v) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy

of the donor, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) Has demonstrated proficiency in collections by completing five consecutive error-free mock collections.

(i) The five mock collections must include one uneventful collection scenario, one insufficient specimen quantity scenario, one temperature out of range scenario, one scenario in which the donor refuses to sign the federal CCF, and one scenario in which the donor refuses to initial the specimen bottle tamper-evident seal.

(ii) A qualified trainer for collectors must monitor and evaluate the individual being trained, in person or by a means that provides real-time observation and interaction between the trainer and the trainee, and the trainer must attest in writing that the mock collections are error-free.

(b) A trained collector must complete refresher training at least every five years that includes the requirements in Section 4.3(a).

(c) The collector must maintain the documentation of their training and provide that documentation to a federal agency when requested.

(d) An individual may not collect specimens for a federal agency until the individual's training as a collector has been properly documented.

Section 4.4 What are the requirements to be an observer for a direct observed collection?

(a) An individual may serve as an observer for a direct observed collection when the individual has satisfied the requirements:

(1) Is knowledgeable about the direct observed collection procedure described in Section 8.9;

(2) Is knowledgeable about any guidance provided by the federal agency's drug-free workplace program or additional information provided by the Secretary relating to the direct observed collection procedure described in these Guidelines;

(3) Has received training on the following subjects:

(i) All steps necessary to perform a direct observed collection; and

(ii) The observer's responsibility for maintaining the integrity of the collection process, ensuring the privacy of individuals being tested, ensuring that the observation is done in a professional manner that minimizes the discomfort to the observed donor, ensuring the security of the specimen by maintaining visual contact with the collection container until it is delivered to the collector, and avoiding conduct or

statements that could be viewed as offensive or inappropriate.

(b) The sex of the observer must be the same as the donor's sex. The observer selection process is described in Section 8.10(b).

(c) The observer is not required to be a trained collector.

Section 4.5 What are the requirements to be a trainer for collectors?

(a) Individuals are considered qualified trainers for collectors and may train others to collect urine specimens when they have completed the following:

(1) Qualified as a trained collector and regularly conducted urine drug test collections for a period of at least one year; or

(2) Completed a "train the trainer" course given by an organization (e.g., manufacturer, private entity, contractor, federal agency).

(b) A qualified trainer for collectors must complete refresher training at least every five years in accordance with the collector requirements in Section 4.3(a).

(c) A qualified trainer for collectors must maintain the documentation of the trainer's training and provide that documentation to a Federal agency when requested.

Section 4.6 What must a federal agency do before a collector is permitted to collect a specimen?

A federal agency must ensure the following:

(a) The collector has satisfied the requirements described in Section 4.3;

(b) The collector, who may be self-employed, or an organization (e.g., third party administrator that provides a collection service, collector training company, federal agency that employs its own collectors) maintains a copy of the training record(s); and

(c) The collector has been provided the name and telephone number of the federal agency representative.

Subpart E—Collection Sites*Section 5.1 Where can a collection for a drug test take place?*

(a) A collection site may be a permanent or temporary facility located either at the work site or at a remote site.

(b) In the event that an agency-designated collection site is not accessible and there is an immediate requirement to collect a urine specimen (e.g., an accident investigation), a public restroom may be used for the collection, using the procedures for a monitored collection described in Section 8.12.

(c) In the event that an agency-designated collection site is not

accessible to a donor with a disability, another site may be used for the collection, using the procedures for a monitored collection described in Section 8.12.

Section 5.2 What are the requirements for a collection site?

The facility used as a collection site must have the following:

(a) Provisions to ensure donor privacy during the collection (as described in Section 8.1);

(b) A suitable and clean surface area that is not accessible to the donor for handling the specimens and completing the required paperwork;

(c) A secure temporary storage area to maintain specimens until the specimen is transferred to an HHS-certified laboratory or IITF;

(d) A restricted access area where only authorized personnel may be present during the collection;

(e) A restricted access area for the storage of collection supplies;

(f) A restricted access area for the secure storage of records; and

(g) The ability to restrict the donor access to potential diluents in accordance with Section 8.2.

Section 5.3 Where must collection site records be stored?

Collection site records must be stored at a secure site designated by the collector or the collector's employer.

Section 5.4 How long must collection site records be stored?

Collection site records (e.g., collector copies of the OMB-approved federal CCF) must be stored securely for a minimum of 2 years. The collection site may convert hardcopy records to electronic records for storage and discard the hardcopy records after 6 months.

Section 5.5 How does the collector ensure the security and integrity of a specimen at the collection site?

(a) A collector must do the following to maintain the security and integrity of a specimen:

(1) Not allow unauthorized personnel to enter the collection area during the collection procedure;

(2) Perform only one donor collection at a time;

(3) Restrict access to collection supplies before, during, and after collection;

(4) Ensure that only the collector and the donor are allowed to handle the unsealed specimen;

(5) Ensure the chain of custody process is maintained and documented throughout the entire collection, storage, and transport procedures;

(6) Ensure that the federal CCF is completed and distributed as required; and

(7) Ensure that specimens transported to an HHS-certified laboratory or IITF are sealed and placed in transport containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes, padded mailers, or other suitable shipping container), and those containers are securely sealed to eliminate the possibility of undetected tampering;

(b) Couriers, express carriers, and postal service personnel are not required to document chain of custody since specimens are sealed in packages that would indicate tampering during transit to the HHS-certified laboratory or IITF.

Section 5.6 What are the privacy requirements when collecting a urine specimen?

Collections must be performed at a site that provides reasonable privacy (as described in Section 8.1).

Subpart F—Federal Drug Testing Custody and Control Form

Section 6.1 What federal form is used to document custody and control?

The OMB-approved federal CCF must be used to document custody and control of each specimen at the collection site.

Section 6.2 What happens if the correct OMB-approved federal CCF is not available or is not used?

(a) The use of a non-federal CCF or an expired federal CCF is not, by itself, a reason for the HHS-certified laboratory or IITF to automatically reject the specimen for testing or for the MRO to cancel the test.

(b) If the collector does not use the correct OMB-approved federal CCF, the collector must document that it is a federal agency specimen collection and provide the reason that the incorrect form was used. Based on the information provided by the collector, the HHS-certified laboratory or IITF must handle and test the specimen as a federal agency specimen.

(c) If the HHS-certified laboratory, HHS-certified IITF, or MRO discovers that the collector used an incorrect form, the laboratory, IITF, or MRO must obtain a memorandum for the record from the collector describing the reason the incorrect form was used. If a memorandum for the record cannot be obtained, the laboratory or IITF reports a rejected for testing result to the MRO and the MRO cancels the test. The HHS-certified laboratory or IITF must wait at

least 5 business days while attempting to obtain the memorandum before reporting a rejected for testing result to the MRO.

Subpart G—Urine Specimen Collection Containers and Bottles

Section 7.1 What is used to collect a urine specimen?

A single-use collection container with a means (i.e., thermometer) to measure urine temperature and two specimen bottles must be used.

Section 7.2 What are the requirements for a urine collection container and specimen bottles?

(a) The collection container, the thermometer, and the specimen bottles must not substantially affect the composition of drugs and/or metabolites in the urine specimen.

(b) The two specimen bottles must be sealable and non-leaking, and must maintain the integrity of the specimen during storage and transport so that the specimen contained therein can be tested in an HHS-certified laboratory or IITF for the presence of drugs or their metabolites.

(c) The two specimen bottles must be sufficiently transparent (e.g., translucent) to enable an objective assessment of specimen appearance and identification of abnormal physical characteristics without opening the bottle.

Section 7.3 What are the minimum performance requirements for a urine collection container and specimen bottles?

(a) The collection container must be capable of holding at least 55 mL and have a volume marking clearly noting a level of 45 mL.

(b) One of the two specimen bottles must be capable of holding at least 35 mL and the other at least 20 mL, and each must have a volume marking clearly noting the appropriate level (30 mL for the primary specimen and 15 mL for the split specimen).

(c) The thermometer may be affixed to or built into the collection container and must provide graduated temperature readings from 32–38 °C/90–100 °F. Alternatively, the collector may use another technology to measure specimen temperature (e.g., thermal radiation scanning), providing the thermometer does not come into contact with the specimen.

Subpart H—Urine Specimen Collection Procedure

Section 8.1 What privacy must the donor be given when providing a urine specimen?

The following privacy requirements apply when a donor is providing a urine specimen:

(a) Only authorized personnel and the donor may be present in the restricted access area where the collection takes place.

(b) The collector is not required to be the same sex as the donor. The sex of the observer for purposes of a direct observed collection (*i.e.*, as described in Section 8.10) must be the same as the donor's sex. The sex of the monitor for a monitored collection (*i.e.*, as described in Section 8.12) must be the same as the donor's sex, unless the monitor is a medical professional (*e.g.*, nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place).

(c) The collector must give the donor visual privacy while providing the specimen. The donor is allowed to provide a urine specimen in an enclosed stall within a multi-stall restroom or in a single person restroom during a monitored collection.

Section 8.2 What must the collector ensure at the collection site before starting a urine specimen collection?

The collector must deter the dilution or substitution of a specimen at the collection site by:

(a) Placing a toilet bluing agent in a toilet bowl or toilet tank, so the reservoir of water in the toilet bowl always remains blue. If no bluing agent is available or if the toilet has an automatic flushing system, the collector shall turn the water supply off to the toilet and flush the toilet to remove the water in the toilet when possible.

(b) Secure other sources of water (*e.g.*, shower or sink) in the enclosure where urination occurs. If the enclosure has a source of water that cannot be disabled or secured, a monitored collection must be conducted in accordance with Section 8.11.

Section 8.3 What are the preliminary steps in the urine specimen collection procedure?

The collector must take the following steps before beginning a urine specimen collection:

(a) If a donor fails to arrive at the collection site at the assigned time, the collector must follow the federal agency policy or contact the federal agency

representative to obtain guidance on action to be taken.

(b) When the donor arrives at the collection site, the collector should begin the collection procedure without undue delay. For example, the collection should not be delayed because the donor states that they are unable to urinate or an authorized employer or employer representative is late in arriving.

(c) The collector requests the donor to present photo identification (*e.g.*, driver's license; employee badge issued by the employer; an alternative photo identification issued by a federal, state, or local government agency). If the donor does not have proper photo identification, the collector shall contact the supervisor of the donor or the federal agency representative who can positively identify the donor. If the donor's identity cannot be established, the collector must not proceed with the collection.

(d) The collector must provide identification (*e.g.*, employee badge, employee list) if requested by the donor.

(e) The collector explains the basic collection procedure to the donor.

(f) The collector provides the instructions for completing the federal CCF for the donor's review, and informs the donor that the instructions are available upon request.

(g) The collector answers any reasonable and appropriate questions the donor may have regarding the collection procedure.

(h) The collector asks the donor to remove any unnecessary outer garments (*e.g.*, coat, jacket) that might conceal items or substances that could be used to adulterate or substitute the urine specimen. The collector must ensure that all personal belongings (*e.g.*, purse or briefcase) remain with the outer garments. The donor may retain the donor's wallet. The donor is not required to remove any items worn for faith-based or disability reasons.

(i) The collector asks the donor to empty the donor's pockets and display the contents to ensure no items are present that could be used to adulterate or substitute the specimen.

(1) If no items are present that can be used to adulterate, substitute, or dilute the specimen, the collector instructs the donor to return the items to their pockets and continues the collection procedure.

(2) If an item is present whose purpose is to adulterate, substitute, or dilute the specimen (*e.g.*, a commercial drug culture product or other substance for which the donor has no reasonable explanation), this is considered a refusal to test. The collector must stop the

collection and report the refusal to test as described in Section 8.13.

(3) If an item that could be used to adulterate, substitute, or dilute the specimen (*e.g.*, common personal care products such as eyedrops, mouthwash, or hand sanitizer) appears to have been inadvertently brought to the collection site, the collector must secure the item and continue with the normal collection procedure.

(4) If the donor refuses to show the collector the items in their pockets, this is considered a refusal to test. The collector must stop the collection and report the refusal to test as described in Section 8.13.

(j) The collector shall instruct the donor to wash and dry the donor's hands prior to urination. After washing the donor's hands, the donor must remain in the presence of the collector and must not have access to any water fountain, faucet, soap dispenser, cleaning agent, or any other materials which could be used to adulterate or substitute the specimen.

(k) If the donor refuses to wash their hands when instructed by the collector, this is considered a "refusal to test." The collector must stop the collection and report the refusal to test as described in Section 8.13.

Section 8.4 What steps does the collector take in the collection procedure before the donor provides a urine specimen?

(a) The collector will provide or the donor may select a specimen collection container that is clean, unused, wrapped/sealed in original packaging and compliant with subpart G of these Guidelines. The specimen collection container package will be opened in view of the donor.

(b) The collector instructs the donor to provide the specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collector directs the donor to provide a specimen of at least 45 mL, to not flush the toilet, and to return with the specimen as soon as the donor has completed the void.

(1) Except in the case of a direct observed collection (*i.e.*, as described in Section 8.10) or a monitored collection (*i.e.*, as described in Section 8.12), neither the collector nor anyone else may go into the room with the donor.

(2) The collector may set a reasonable time limit for specimen collection.

(c) The collector notes any unusual behavior or appearance of the donor on the federal CCF. If the collector detects any conduct that clearly indicates an attempt to tamper with a specimen (*e.g.*, substitute urine in plain view or an

attempt to bring into the collection site an adulterant or urine substitute), the collector must report a refusal to test in accordance with Section 8.13.

Section 8.5 What steps does the collector take during and after the urine specimen collection procedure?

Integrity and Identity of the Specimen. The collector must take the following steps during and after the donor provides the urine specimen:

(a) The collector must inform the donor that, once the collection procedure has begun, the donor must remain at the collection site (*i.e.*, in an area designated by the collector) until the collection is complete and that failure to follow these instructions will be reported as a refusal to test. This includes the wait period (*i.e.*, up to 3 hours) if needed to provide a sufficient specimen as described in Sections 8.5(f)(2) and 8.6.

(b) After providing the specimen, the donor gives the specimen collection container to the collector. Both the donor and the collector must keep the specimen container in view at all times until the collector seals the specimen bottles as described in Section 8.8.

(c) After the donor has given the specimen to the collector, whenever practical, the donor shall be allowed to wash the donor's hands and the donor may flush the toilet.

(d) The collector must measure the temperature of the specimen within 4 minutes of receiving the specimen from the donor. The collector records on the Federal CCF whether or not the temperature is in the acceptable range of 32°–38 °C/90°–100 °F.

(1) The temperature measuring device must accurately reflect the temperature of the specimen and not contaminate the specimen.

(2) If the temperature of the specimen is outside the range of 32°–38 °C/90°–100 °F, that is a reason to believe that the donor may have adulterated or substituted the specimen. Another specimen must be collected under direct observation in accordance with Section 8.9. The collector must forward both specimens (*i.e.*, from the first and second collections) to an HHS-certified laboratory for testing and record a comment on the federal CCF for each specimen.

(e) The collector must inspect the specimen to determine if there is any sign indicating that the specimen may not be a valid urine specimen (*e.g.*, unusual color, presence of foreign objects or material, unusual odor).

(1) The collector notes any unusual finding on the federal CCF. A specimen suspected of not being a valid urine

specimen must be forwarded to an HHS-certified laboratory for testing.

(2) When there is any reason to believe that a donor may have adulterated or substituted the specimen, another specimen must be obtained as soon as possible under direct observation in accordance with Section 8.10. The collector must forward both specimens (*i.e.*, from the first and second collections) to an HHS-certified laboratory for testing and record a comment on the federal CCF for each specimen.

(f) The collector must determine the volume of urine in the specimen container. The collector must never combine urine collected from separate voids to create a specimen.

(1) If the volume is at least 45 mL, the collector will proceed with steps described in Section 8.8.

(2) If the volume is less than 45 mL, the collector discards the specimen and immediately collects a second specimen using the same procedures as for the first specimen (including steps in Section 8.5(c) and (d)).

(i) The collector may give the donor a reasonable amount of liquid to drink for this purpose (*e.g.*, an 8 ounce glass of water every 30 minutes, but not to exceed a maximum of 40 ounces over a period of 3 hours or until the donor has provided a sufficient urine specimen). However, the donor is not required to drink any fluids during this waiting time.

(ii) If the donor provides a sufficient urine specimen (*i.e.*, at least 45 mL), the collector proceeds with steps described in Section 8.8.

(iii) If the donor has not provided a sufficient specimen (*i.e.*, at least 45 mL) within three hours of the first unsuccessful attempt to provide the specimen, the collector records the reason for not collecting a urine specimen on the federal CCF, notifies the federal agency's designated representative for authorization to collect an alternate specimen, and sends the appropriate copies of the federal CCF to the MRO and to the federal agency's designated representative. The federal agency may choose to provide the collection site with a standard protocol to follow in lieu of requiring the collector to notify the agency's designated representative for authorization in each case. If an alternate specimen is authorized, the collector may begin the collection procedure for the alternate specimen (see Section 8.7) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using the alternate specimen.

(g) If the donor fails to remain present through the completion of the collection, declines to have a direct observed collection as required in Section 8.5(d)(2) or (e)(2), refuses to provide a second specimen as required in Section 8.5(f)(2), or refuses to provide an alternate specimen as authorized in Section 8.5(f)(2)(iii), the collector stops the collection and reports the refusal to test in accordance with Section 8.13.

Section 8.6 What procedure is used when the donor states that they are unable to provide a urine specimen?

(a) If the donor states that they are unable to provide a urine specimen during the collection process, the collector requests that the donor enter the restroom (stall) and attempt to provide a urine specimen.

(b) The donor demonstrates their inability to provide a specimen when he or she comes out of the stall with an empty collection container.

(1) If the donor states that they could provide a specimen after drinking some fluids, the collector gives the donor a reasonable amount of liquid to drink for this purpose (*e.g.*, an 8 ounce glass of water every 30 minutes, but not to exceed a maximum of 40 ounces over a period of 3 hours or until the donor has provided a sufficient urine specimen). If the donor simply needs more time before attempting to provide a urine specimen, the donor may choose not to drink any fluids during the 3 hour wait time.

(2) If the donor states that they are unable to provide a urine specimen, the collector records the reason for not collecting a urine specimen on the federal CCF, notifies the federal agency's designated representative for authorization to collect an alternate specimen, and sends the appropriate copies of the federal CCF to the MRO and to the federal agency's designated representative. The federal agency may choose to provide the collection site with a standard protocol to follow in lieu of requiring the collector to notify the agency's designated representative for authorization in each case. If an alternate specimen is authorized, the collector begins the collection procedure for the alternate specimen (see Section 8.7) in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using the alternate specimen.

Section 8.7 If the donor is unable to provide a urine specimen, may another specimen type be collected for testing?

Yes, if the alternate specimen type is authorized by Mandatory Guidelines for Federal Workplace Drug Testing

Programs and specifically authorized by the federal agency.

Section 8.8 How does the collector prepare the urine specimens?

(a) All federal agency collections are to be split specimen collections.

(b) The collector, in the presence of the donor, pours the urine from the collection container into two specimen bottles to be labeled "A" and "B". The collector pours at least 30 mL of urine into Bottle A and at least 15 mL into Bottle B, and caps each bottle.

(c) In the presence of the donor, the collector places a tamper-evident label/seal from the federal CCF over the cap of each specimen bottle in a manner to ensure that any attempt to access the specimen prior to receipt by the laboratory will be detected. The collector records the date of the collection on the tamper-evident labels/seals.

(d) The collector instructs the donor to initial the tamper-evident labels/seals on each specimen bottle. If the donor refuses to initial the labels/seals, the collector notes the refusal on the federal CCF and continues with the collection process.

(e) The collector must ensure that all required information is included on the federal CCF.

(f) The collector asks the donor to read and sign a statement on the federal CCF certifying that the specimens identified were collected from the donor. If the donor refuses to sign the certification statement, the collector notes the refusal on the federal CCF and continues with the collection process.

(g) The collector signs and prints their name on the federal CCF, completes the federal CCF, and distributes the copies of the federal CCF as required.

(h) The collector seals the specimens (A and B) in a package and, within 24 hours or during the next business day, sends them to the HHS-certified laboratory or IITF that will be testing the primary (A) specimen.

(i) If the specimen and federal CCF are not immediately transported to an HHS-certified laboratory or IITF, they must remain under direct control of the collector or be appropriately secured under proper specimen storage conditions until transported.

(j) The collector must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: the collector may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by

federal agency regulation. Neither the collector nor anyone else may conduct further testing (such as specimen validity testing) on the excess urine.

Section 8.9 When is a direct observed collection conducted?

A direct observed collection procedure must be conducted when:

(a) The agency has authorized a direct observed collection because:

(1) The donor's previous drug test result was reported by an MRO as positive, adulterated, or substituted; or

(2) The HHS-certified laboratory reports to the MRO that a specimen is invalid, and the MRO reported to the agency that there was not a legitimate explanation for the result; or

(3) The MRO reported to the agency that the primary (A) specimen was positive, adulterated, or substituted but the test was cancelled because the split (B) specimen could not be tested or the split specimen failed to reconfirm the primary specimen result; or

(b) At the collection site, an immediate collection of a second urine specimen is required because:

(1) The temperature of the specimen collected during a routine collection is outside the acceptable temperature range; or

(2) The collector suspects that the donor has tampered with the specimen during a routine collection (e.g., abnormal physical characteristic such as unusual color and/or odor, and/or excessive foaming when shaken).

(c) The collector must contact a collection site supervisor to review and concur in advance with any decision by the collector to obtain a specimen under direct observation.

(d) If the donor declines to have a direct observed collection, the collector reports a refusal to test (i.e., as described in Section 8.13).

Section 8.10 How is a direct observed collection conducted?

(a) A direct observed collection procedure is the same as that for a routine collection, except an observer watches the donor urinate into the collection container. The observer's sex must be the same as the donor's sex, with no exception to this requirement.

(b) Before an observer is selected, the collector informs the donor that the sex of the observer will match the donor's sex. The collector then selects the observer to conduct the observation.

(i) The collector asks the donor to identify the donor's sex on the federal CCF and initial it.

(ii) The donor will then be provided an observer whose sex matches the donor's sex.

(iii) The collector documents the observer's name and sex on the federal CCF.

(c) If there is no trained collector available of the same sex as the donor, the collector or collection site supervisor shall select an observer of the same sex as the donor who has been trained in direct observed specimen collection as described in Section 4.4. The observer may be an individual that is not a trained collector.

(d) At the point in a routine collection where the donor enters the restroom with the collection container, a direct observed collection includes the following additional steps:

(1) The observer enters the restroom with the donor;

(2) The observer must directly watch the urine go from the donor's body into the collection container (the use of mirrors or video cameras is not permitted);

(3) The observer must not touch or handle the collection container unless the observer is also serving as the collector;

(4) After the donor has completed urinating into the collection container:

(i) If the same person serves as the observer and collector, that person may receive the collection container from the donor while they are both in the restroom;

(ii) If the observer is not serving as the collector, the donor and observer leave the restroom and the donor hands the collection container directly to the collector. The observer must maintain visual contact of the collection container until the donor hands the container to the collector.

(5) The collector checks the box for an observed collection on the federal CCF and writes the name of the observer and the reason for an observed collection on the federal CCF; and

(6) The collector then continues with the routine collection procedure in Section 8.3.

Section 8.11 When is a monitored collection conducted?

(a) In the event that an agency-designated collection site is not available and there is an immediate requirement to collect a specimen (e.g., an accident investigation), a public restroom may be used for the collection, using the procedures for a monitored collection described in Section 8.12.

(b) If the enclosure used by the donor to provide a specimen has a source of water that cannot be disabled or secured, a monitored collection must be conducted.

(c) If the donor declines to permit a collection to be monitored when

required, the collector reports a refusal to test (*i.e.*, as described in Section 8.13).

Section 8.12 *How is a monitored collection conducted?*

A monitored collection is the same as that for a routine collection, except that a monitor accompanies the donor into the restroom to check for signs that the donor may be tampering with the specimen. The monitor remains in the restroom, but outside the stall, while the donor is providing the specimen. A person of the same sex as the donor shall serve as the monitor, unless the monitor is a medical professional (*e.g.*, nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The same procedures used for selecting an observer of the appropriate sex in Section 8.10(b) must be used to select the monitor for the purposes of Section 8.12, unless the monitor is a medical professional as described above. The monitor may be an individual other than the collector and need not be a qualified collector.

(a) The collector secures the restroom being used for the monitored collection so that no one except the donor and the monitor can enter the restroom until after the collection has been completed.

(b) The monitor enters the restroom with the donor.

(c) The monitor must not watch the donor urinate into the collection container. If the monitor hears sounds or makes other observations indicating an attempt by the donor to tamper with a specimen, there must be an additional collection under direct observation in accordance with Section 8.9.

(d) The monitor must not touch or handle the collection container unless the monitor is also the collector.

(e) After the donor has completed urinating into the collection container:

(1) If the same person serves as the monitor and collector, that person may receive the collection container from the donor while they are both in the restroom;

(2) If the monitor is not serving as the collector, the donor and monitor leave the restroom and the donor hands the collection container directly to the collector. The monitor must ensure that the donor takes the collection container directly to the collector as soon as the donor has exited the enclosure.

(f) If the monitor is not serving as the collector, the collector writes the name of the monitor on the federal CCF.

(g) The collector then continues with the routine collection procedure in Section 8.3.

Section 8.13 *How does the collector report a donor's refusal to test?*

If there is a refusal to test as defined in Section 1.7, the collector stops the collection, discards any urine collected and reports the refusal to test by:

(a) Notifying the federal agency by means (*e.g.*, telephone, email, or secure fax) that ensures that the notification is immediately received,

(b) Documenting the refusal to test including the reason on the federal CCF, and

(c) Sending all copies of the federal CCF to the federal agency's designated representative.

Section 8.14 *What are a federal agency's responsibilities for a collection site?*

(a) A federal agency must ensure that collectors and collection sites satisfy all requirements in subparts D, E, F, G, and H of these Guidelines.

(b) A federal agency (or only one Federal agency when several agencies are using the same collection site) must inspect 5 percent or up to a maximum of 50 collection sites each year, selected randomly from those sites used to collect agency specimens (*e.g.*, virtual, onsite, or self-evaluation).

(c) A federal agency must investigate reported collection site deficiencies (*e.g.*, specimens reported "rejected for testing" by an HHS-certified laboratory or IITF) and take appropriate action which may include a collection site self-assessment (*i.e.*, using the Collection Site Checklist for the Collection of Urine Specimens for Federal agency Workplace Drug Testing Programs) or an inspection of the collection site. The inspections of these additional collection sites may be included in the 5 percent or maximum of 50 collection sites inspected annually.

Subpart I—HHS Certification of Laboratories and IITFs

Section 9.1 *Who has the authority to certify laboratories and IITFs to test urine specimens for federal agencies?*

(a) The Secretary has broad discretion to take appropriate action to ensure the full reliability and accuracy of drug testing and reporting, to resolve problems related to drug testing, and to enforce all standards set forth in these Guidelines. The Secretary has the authority to issue directives to any HHS-certified laboratory or IITF, including suspending the use of certain analytical procedures when necessary to protect the integrity of the testing process; ordering any HHS-certified laboratory or IITF to undertake corrective actions to respond to material deficiencies

identified by an inspection or through performance testing; ordering any HHS-certified laboratory or IITF to send specimens or specimen aliquots to another HHS-certified laboratory for retesting when necessary to ensure the accuracy of testing under these Guidelines; ordering the review of results for specimens tested under the Guidelines for private sector clients to the extent necessary to ensure the full reliability of drug testing for federal agencies; and ordering any other action necessary to address deficiencies in drug testing, analysis, specimen collection, chain of custody, reporting of results, or any other aspect of the certification program.

(b) A laboratory or IITF is prohibited from stating or implying that it is certified by HHS under these Guidelines to test urine specimens for federal agencies unless it holds such certification.

Section 9.2 *What is the process for a laboratory or IITF to become HHS-certified?*

(a) A laboratory or IITF seeking HHS certification must:

(1) Submit a completed OMB-approved application form (*i.e.*, the applicant laboratory or IITF provides detailed information on both the administrative and analytical procedures to be used for federally regulated specimens);

(2) Have its application reviewed as complete and accepted by HHS;

(3) Successfully complete the PT challenges in 3 consecutive sets of initial PT samples;

(4) Satisfy all the requirements for an initial inspection; and

(5) Receive notification of certification from the Secretary before testing specimens for federal agencies.

Section 9.3 *What is the process for a laboratory or IITF to maintain HHS certification?*

(a) To maintain HHS certification, a laboratory or IITF must:

(1) Successfully participate in both the maintenance PT and inspection programs (*i.e.*, successfully test the required quarterly sets of maintenance PT samples, undergo an inspection 3 months after being certified, and undergo maintenance inspections at a minimum of every 6 months thereafter);

(2) Respond in an appropriate, timely, and complete manner to required corrective action requests if deficiencies are identified in the maintenance PT performance, during the inspections, operations, or reporting; and

(3) Satisfactorily complete corrective remedial actions, and undergo special

inspection and special PT sets to maintain or restore certification when material deficiencies occur in either the PT program, inspection program, or in operations and reporting.

Section 9.4 What is the process when a laboratory or IITF does not maintain its HHS certification?

(a) A laboratory or IITF that does not maintain its HHS certification must:

(1) Stop testing federally regulated specimens;

(2) Ensure the security of federally regulated specimens and records throughout the required storage period described in Sections 11.20, 11.21, 12.18, and 14.8;

(3) Ensure access to federally regulated specimens and records in accordance with Sections 11.23, 11.24, 12.20, and 12.21 and subpart P of these Guidelines; and

(4) Follow the HHS suspension and revocation procedures when imposed by the Secretary, follow the HHS procedures in subpart P of these Guidelines that will be used for all actions associated with the suspension and/or revocation of HHS-certification.

Section 9.5 What are the qualitative and quantitative specifications of performance testing (PT) samples?

(a) PT samples used to evaluate drug tests will be prepared using the following specifications:

(1) PT samples may contain one or more of the drugs and drug metabolites in the drug testing panel and must satisfy one of the following parameters:

(i) The concentration of a drug or metabolite will be at least 20 percent above the initial test cutoff for the drug or drug metabolite;

(ii) The concentration of a drug or metabolite may be as low as 40 percent of the confirmatory test cutoff when the PT sample is designated as a retest sample; or

(iii) The concentration of drug or metabolite may differ from Section 9.5(a)(1)(i) and (ii) for a special purpose.

(2) A PT sample may contain an interfering substance, an adulterant, or other substances for special purposes, or may satisfy the criteria for a substituted specimen, dilute specimen, or invalid result.

(3) A negative PT sample will not contain a measurable amount of a target analyte.

(b) PT samples used to evaluate specimen validity tests shall satisfy, but are not limited to, one of the following criteria:

(1) The nitrite concentration will be at least 20 percent above the cutoff;

(2) The pH will be between 1.5 and 5.0 or between 8.5 and 12.5;

(3) The concentration of an oxidant will be at a level sufficient to challenge a laboratory's ability to identify and confirm the oxidant;

(4) The creatinine concentration will be between 0 and 20 mg/dL; or

(5) The specific gravity will be less than or equal to 1.0050 or between 1.0170 and 1.0230.

(c) For each PT cycle, the set of PT samples going to each HHS-certified laboratory or IITF will vary but, within each calendar year, each HHS-certified laboratory or IITF will analyze essentially the same total set of samples.

(d) The laboratory or IITF must (to the greatest extent possible) handle, test, and report a PT sample in a manner identical to that used for a donor specimen, unless otherwise specified.

Section 9.6 What are the PT requirements for an applicant laboratory that seeks to perform urine testing?

(a) An applicant laboratory that seeks certification under these Guidelines to perform urine testing must satisfy the following criteria on three consecutive sets of PT samples:

(1) Have no false positive results;

(2) Correctly identify, confirm, and report at least 90 percent of the total drug challenges over the three sets of PT samples;

(3) For laboratories that will test primary (A) specimens, correctly identify at least 80 percent of the drug challenges for each initial drug test over the three sets of PT samples;

(4) For the confirmatory drug tests, correctly determine the concentrations (*i.e.*, no more than ± 20 percent or ± 2 standard deviations [whichever is larger] from the appropriate reference or peer group means) for at least 80 percent of the total drug challenges over the three sets of PT samples;

(5) For the confirmatory drug tests, do not obtain any drug concentration that differs by more than ± 50 percent from the appropriate reference or peer group mean;

(6) For each confirmatory drug test, correctly identify and determine the concentrations (*i.e.*, no more than ± 20 percent or ± 2 standard deviations [whichever is larger] from the appropriate reference or peer group means) for at least 50 percent of the drug challenges for an individual drug over the three sets of PT samples;

(7) Correctly identify at least 80 percent of the total specimen validity testing challenges over the three sets of PT samples;

(8) Correctly identify at least 80 percent of the challenges for each

individual specimen validity test over the three sets of PT samples;

(9) For quantitative specimen validity tests, obtain quantitative values for at least 80 percent of the total challenges over the three sets of PT samples that satisfy the following criteria:

(i) Nitrite and creatinine concentrations are no more than ± 20 percent or ± 2 standard deviations from the appropriate reference or peer group mean; and

(ii) pH values are no more than ± 0.3 pH units from the appropriate reference or peer group mean using a pH meter; and

(iii) Specific gravity values are no more than ± 0.0003 specific gravity units from the appropriate reference or peer group mean when the mean is less than 1.0100 and specific gravity values are no more than ± 0.0004 specific gravity units from the appropriate reference or peer group mean when the mean is equal to or greater than 1.0100;

(10) Do not obtain any quantitative value on a specimen validity test PT sample that differs from the appropriate reference or peer group mean by more than ± 50 percent for nitrite and creatinine concentrations, ± 0.8 pH units using a pH meter, ± 0.0006 specific gravity units when the mean is less than 1.0100, or ± 0.0007 specific gravity units when the mean is equal to or greater than 1.0100; and

(11) Do not report any sample as adulterated with a compound that is not present in the sample, adulterated based on pH when the appropriate reference or peer group mean is within the acceptable pH range, substituted when the appropriate reference or peer group means for both creatinine and specific gravity are within the acceptable range, or substituted when the appropriate reference or peer group mean for a biomarker is within the acceptable range.

(b) Failure to satisfy these requirements will result in the denial of the laboratory's application for HHS certification to perform urine testing.

Section 9.7 What are the PT requirements for an HHS-certified urine laboratory?

(a) A laboratory certified under these Guidelines to perform urine testing must satisfy the following criteria on the maintenance PT samples:

(1) Have no false positive results;

(2) Correctly identify, confirm, and report at least 90 percent of the total drug challenges over two consecutive PT cycles;

(3) For laboratories that test primary (A) specimens, correctly identify at least 80 percent of the drug challenges for

each initial drug test over two consecutive PT cycles;

(4) For the confirmatory drug tests, correctly determine that the concentrations for at least 80 percent of the total drug challenges are no more than ± 20 percent or ± 2 standard deviations (whichever is larger) from the appropriate reference or peer group means over two consecutive PT cycles;

(5) For the confirmatory drug tests, do not obtain any drug concentration that differs by more than ± 50 percent from the appropriate reference or peer group means;

(6) For each confirmatory drug test, correctly identify and determine that the concentrations for at least 50 percent of the drug challenges for an individual drug are no more than ± 20 percent or ± 2 standard deviations (whichever is larger) from the appropriate reference or peer group means over two consecutive PT cycles;

(7) Correctly identify at least 80 percent of the total specimen validity testing challenges over two consecutive PT cycles;

(8) Correctly identify at least 80 percent of the challenges for each individual specimen validity test over two consecutive PT cycles;

(9) For quantitative specimen validity tests, obtain quantitative values for at least 80 percent of the total challenges over two consecutive PT cycles that satisfy the following criteria:

(i) Nitrite and creatinine concentrations are no more than ± 20 percent or ± 2 standard deviations from the appropriate reference or peer group mean;

(ii) pH values are no more than ± 0.3 pH units from the appropriate reference or peer group mean using a pH meter; and

(iii) Specific gravity values are no more than ± 0.0003 specific gravity units from the appropriate reference or peer group mean when the mean is less than 1.0100 and specific gravity values are no more than ± 0.0004 specific gravity units from the appropriate reference or peer group mean when the mean is equal to or greater than 1.0100;

(10) Do not obtain any quantitative value on a specimen validity test PT sample that differs from the appropriate reference or peer group mean by more than ± 50 percent for nitrite and creatinine concentrations, ± 0.8 pH units using a pH meter, ± 0.0006 specific gravity units when the mean is less than 1.0100, or ± 0.0007 specific gravity units when the mean is equal to or greater than 1.0100; and

(11) Do not report any PT sample as adulterated with a compound that is not present in the sample, adulterated based

on pH when the appropriate reference or peer group mean is within the acceptable pH range, substituted when the appropriate reference or peer group means for both creatinine and specific gravity are within the acceptable range, or substituted when the appropriate reference or peer group mean for a biomarker is within the acceptable range.

(b) Failure to participate in all PT cycles or to satisfy these requirements may result in suspension or revocation of an HHS-certified laboratory's certification.

Section 9.8 What are the PT requirements for an applicant IITF?

(a) An applicant IITF that seeks certification under these Guidelines must satisfy the following criteria on three consecutive sets of PT samples:

(1) Correctly identify at least 90 percent of the total drug challenges over the three sets of PT samples;

(2) Correctly identify at least 80 percent of the drug challenges for each individual drug test over the three sets of PT samples;

(3) Correctly identify at least 80 percent of the total specimen validity test challenges over the three sets of PT samples;

(4) Correctly identify at least 80 percent of the challenges for each individual specimen validity test over the three sets of PT samples;

(5) For quantitative specimen validity tests, obtain quantitative values for at least 80 percent of the total specimen validity test challenges over the three sets of PT samples that satisfy the following criteria:

(i) Creatinine concentrations are no more than ± 20 percent or ± 2 standard deviations (whichever is larger) from the appropriate reference or peer group mean; and

(ii) Specific gravity values are no more than ± 0.001 specific gravity units from the appropriate reference or peer group mean; and

(6) Must not obtain any quantitative value on a specimen validity test PT sample that differs from the appropriate reference or peer group mean by more than ± 50 percent for creatinine concentration or ± 0.002 specific gravity units for specific gravity.

(b) Failure to satisfy these requirements will result in disqualification.

Section 9.9 What are the PT requirements for an HHS-certified IITF?

(a) An IITF certified under these Guidelines must satisfy the following criteria on the maintenance PT samples to maintain its certification:

(1) Correctly identify at least 90 percent of the total drug challenges over two consecutive PT cycles;

(2) Correctly identify at least 80 percent of the drug challenges for each individual drug test over two consecutive PT cycles;

(3) Correctly identify at least 80 percent of the total specimen validity test challenges over two consecutive PT cycles;

(4) Correctly identify at least 80 percent of the challenges for each individual specimen validity test over two consecutive PT cycles;

(5) For quantitative specimen validity tests, obtain quantitative values for at least 80 percent of the total specimen validity test challenges over two consecutive PT cycles that satisfy the following criteria:

(i) Creatinine concentrations are no more than ± 20 percent or ± 2 standard deviations (whichever is larger) from the appropriate reference or peer group mean; and

(ii) Specific gravity values are no more than ± 0.001 specific gravity units from the appropriate reference or peer group mean; and

(6) Must not obtain any quantitative value on a specimen validity test PT sample that differs from the appropriate reference or peer group mean by more than ± 50 percent for creatinine concentration, or ± 0.002 specific gravity units for specific gravity.

(b) Failure to participate in all PT cycles or to satisfy these requirements may result in suspension or revocation of an HHS-certified IITF's certification.

Section 9.10 What are the inspection requirements for an applicant laboratory or IITF?

(a) An applicant laboratory or IITF is inspected by a team of two inspectors.

(b) Each inspector conducts an independent review and evaluation of all aspects of the laboratory's or IITF's testing procedures and facilities using an inspection checklist.

Section 9.11 What are the maintenance inspection requirements for an HHS-certified laboratory or IITF?

(a) An HHS-certified laboratory or IITF must undergo an inspection 3 months after becoming certified and at least every 6 months thereafter.

(b) An HHS-certified laboratory or IITF is inspected by two or more inspectors. The number of inspectors is determined according to the number of specimens reviewed.

(c) Each inspector conducts an independent evaluation and review of the HHS-certified laboratory's or IITF's procedures, records, and facilities using guidance provided by the Secretary.

(d) To remain certified, an HHS-certified laboratory or IITF must continue to satisfy the minimum requirements as stated in these Guidelines.

Section 9.12 Who can inspect an HHS-certified laboratory or IITF and when may the inspection be conducted?

(a) An individual may be selected as an inspector for the Secretary if they satisfy the following criteria:

(1) Has experience and an educational background similar to that required for either a responsible person or a certifying scientist for an HHS-certified laboratory as described in subpart K of these Guidelines or as a responsible technician for an HHS-certified IITF as described in subpart L of these Guidelines;

(2) Has read and thoroughly understands the policies and requirements contained in these Guidelines and in other guidance consistent with these Guidelines provided by the Secretary;

(3) Submits a resume and documentation of qualifications to HHS;

(4) Attends approved training; and

(5) Performs acceptably as an inspector on an inspection of an HHS-certified laboratory or IITF.

(b) The Secretary or a federal agency may conduct an inspection at any time.

Section 9.13 What happens if an applicant laboratory or IITF does not satisfy the minimum requirements for either the PT program or the inspection program?

If an applicant laboratory or IITF fails to satisfy the requirements established for the initial certification process, the laboratory or IITF must start the certification process from the beginning.

Section 9.14 What happens if an HHS-certified laboratory or IITF does not satisfy the minimum requirements for either the PT program or the inspection program?

(a) If an HHS-certified laboratory or IITF fails to satisfy the minimum requirements for certification, the laboratory or IITF is given a period of time (e.g., 5 or 30 working days depending on the nature of the deficiency) to provide any explanation for its performance and evidence that all deficiencies have been corrected.

(b) A laboratory's or IITF's HHS certification may be revoked, suspended, or no further action taken depending on the seriousness of the deficiencies and whether there is evidence that the deficiencies have been corrected and that current performance meets the requirements for certification.

(c) An HHS-certified laboratory or IITF may be required to undergo a special inspection or to test additional PT samples to address deficiencies.

(d) If an HHS-certified laboratory's or IITF's certification is revoked or suspended in accordance with the process described in subpart P of these Guidelines, the laboratory or IITF is not permitted to test federally regulated specimens until the suspension is lifted or the laboratory or IITF has successfully completed the certification requirements as a new applicant laboratory or IITF.

Section 9.15 What factors are considered in determining whether revocation of a laboratory's or IITF's HHS certification is necessary?

(a) The Secretary shall revoke certification of an HHS-certified laboratory or IITF in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure fully reliable and accurate drug and specimen validity test results and reports.

(b) The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug and specimen validity tests (e.g., an HHS-certified laboratory reporting a false positive result for a drug test);

(2) Unsatisfactory participation in performance testing or inspections;

(3) A material violation of a certification standard, contract term, or other condition imposed on the HHS-certified laboratory or IITF by a federal agency using the laboratory's or IITF's services;

(4) Conviction for any criminal offense committed as an incident to operation of the HHS-certified laboratory or IITF; or

(5) Any other cause that materially affects the ability of the HHS-certified laboratory or IITF to ensure fully reliable and accurate drug test results and reports.

(c) The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing.

Section 9.16 What factors are considered in determining whether to suspend a laboratory's or IITF's HHS certification?

(a) The Secretary may immediately suspend (either partially or fully) a laboratory's or IITF's HHS certification to conduct drug testing for federal agencies if the Secretary has reason to

believe that revocation may be required and that immediate action is necessary to protect the interests of the United States and its employees.

(b) The Secretary shall determine the period and terms of suspension based upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing.

Section 9.17 How does the Secretary notify an HHS-certified laboratory or IITF that action is being taken against the laboratory or IITF?

(a) When laboratory's or IITF's HHS certification is suspended or the Secretary seeks to revoke HHS certification, the Secretary shall immediately serve the HHS-certified laboratory or IITF with written notice of the suspension or proposed revocation by fax, mail, personal service, or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) The written notice shall state that the laboratory or IITF will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date the laboratory or IITF received the notice, or if expedited review is requested, within 3 days of the date the laboratory or IITF received the notice. Subpart P of these Guidelines contains detailed procedures to be followed for an informal review of the suspension or proposed revocation.

(c) A suspension must be effective immediately. A proposed revocation must be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension must terminate immediately and any proposed revocation shall not take effect.

(d) The Secretary will publish in the **Federal Register** the name, address, and telephone number of any HHS-certified laboratory or IITF that has its certification revoked or suspended under Section 9.13 or 9.14, respectively, and the name of any HHS-certified laboratory or IITF that has its suspension lifted. The Secretary shall provide to any member of the public upon request the written notice provided to a laboratory or IITF that has its HHS certification suspended or revoked, as well as the reviewing

official's written decision which upholds or denies the suspension or proposed revocation under the procedures of subpart P of these Guidelines.

Section 9.18 May a laboratory or IITF that had its HHS certification revoked be recertified to test Federal Agency specimens?

Following revocation, a laboratory or IITF may apply for recertification. Unless otherwise provided by the Secretary in the notice of revocation under Section 9.17 or the reviewing official's decision under Section 16.9(e) or 16.14(a), a laboratory or IITF which has had its certification revoked may reapply for HHS certification as an applicant laboratory or IITF.

Section 9.19 Where is the list of HHS-certified laboratories and IITFs published?

(a) The list of HHS-certified laboratories and IITFs is published monthly in the **Federal Register**.

(b) An applicant laboratory or IITF is not included on the list.

Subpart J—Blind Samples Submitted by an Agency

Section 10.1 What are the requirements for Federal agencies to submit blind samples to HHS-certified laboratories or IITFs?

(a) Each federal agency is required to submit blind samples for its workplace drug testing program. The collector must send the blind samples to the HHS-certified laboratory or IITF that the collector sends donor specimens.

(b) Each federal agency must submit at least 3 percent blind samples along with its donor specimens based on the projected total number of donor specimens collected per year (up to a maximum of 400 blind samples). Every effort should be made to ensure that blind samples are submitted quarterly.

(c) Approximately 75 percent of the blind samples submitted each year by an agency must be negative, 15 percent must be positive for one or more drugs, and 10 percent must either be adulterated or substituted.

Section 10.2 What are the requirements for blind samples?

(a) Drug positive blind samples must be validated by the supplier as to their content using appropriate initial and confirmatory tests.

(1) Drug positive blind samples must contain one or more of the drugs or metabolites listed in the drug testing panel.

(2) Drug positive blind samples must contain concentrations of drugs between

1.5 and 2 times the initial drug test cutoff.

(b) Drug negative blind samples (*i.e.*, certified to contain no drugs) must be validated by the supplier as negative using appropriate initial and confirmatory tests.

(c) A blind sample that is adulterated must be validated using appropriate initial and confirmatory specimen validity tests, and have the characteristics to clearly show that it is an adulterated sample at the time of validation.

(d) A blind sample that is substituted must be validated using appropriate initial and confirmatory specimen validity tests, and have the characteristics to clearly show that it is a substituted sample at the time of validation.

(e) The supplier must provide information on the blind samples' content, validation, expected results, and stability to the collection site/collector sending the blind samples to the laboratory or IITF, and must provide the information upon request to the MRO, the federal agency for which the blind sample was submitted, or the Secretary.

Section 10.3 How is a blind sample submitted to an HHS-certified laboratory or IITF?

(a) A blind sample must be submitted as a split specimen (specimens A and B) with the current federal CCF that the HHS-certified laboratory or IITF uses for donor specimens. The collector provides the required information to ensure that the federal CCF has been properly completed and provides fictitious initials on the specimen label/seal. The collector must indicate that the specimen is a blind sample on the MRO copy where a donor would normally provide a signature.

(b) A collector should attempt to distribute the required number of blind samples randomly with donor specimens rather than submitting the full complement of blind samples as a single group.

Section 10.4 What happens if an inconsistent result is reported for a blind sample?

If an HHS-certified laboratory or IITF reports a result for a blind sample that is inconsistent with the expected result (*e.g.*, a laboratory or IITF reports a negative result for a blind sample that was supposed to be positive, a laboratory reports a positive result for a blind sample that was supposed to be negative):

(a) The MRO must contact the laboratory or IITF and attempt to

determine if the laboratory or IITF made an error during the testing or reporting of the sample;

(b) The MRO must contact the blind sample supplier and attempt to determine if the supplier made an error during the preparation or transfer of the sample;

(c) The MRO must contact the collector and determine if the collector made an error when preparing the blind sample for transfer to the HHS-certified laboratory or IITF;

(d) If there is no obvious reason for the inconsistent result, the MRO must notify both the federal agency for which the blind sample was submitted and the Secretary; and

(e) The Secretary shall investigate the blind sample error. A report of the Secretary's investigative findings and the corrective action taken in response to identified deficiencies must be sent to the federal agency. The Secretary shall ensure notification of the finding as appropriate to other federal agencies and coordinate any necessary actions to prevent the recurrence of the error.

Subpart K—Laboratory

Section 11.1 What must be included in the HHS-certified laboratory's standard operating procedure manual?

(a) An HHS-certified laboratory must have a standard operating procedure (SOP) manual that describes, in detail, all HHS-certified laboratory operations. When followed, the SOP manual ensures that all specimens are tested using the same procedures.

(b) The SOP manual must include at a minimum, but is not limited to, a detailed description of the following:

- (1) Chain of custody procedures;
- (2) Accessioning;
- (3) Security;
- (4) Quality control/quality assurance programs;
- (5) Analytical methods and procedures;
- (6) Equipment and maintenance programs;
- (7) Personnel training;
- (8) Reporting procedures; and
- (9) Computers, software, and laboratory information management systems.

(c) All procedures in the SOP manual must be compliant with these Guidelines and all guidance provided by the Secretary.

(d) A copy of all procedures that have been replaced or revised and the dates on which the procedures were in effect must be maintained for at least 2 years.

Section 11.2 What are the responsibilities of the responsible person (RP)?

(a) Manage the day-to-day operations of the HHS-certified laboratory even if another individual has overall responsibility for alternate areas of a multi-specialty laboratory.

(b) Ensure that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the HHS-certified laboratory. The RP must ensure the continued competency of laboratory staff by documenting their in-service training, reviewing their work performance, and verifying their skills.

(c) Maintain a complete and current SOP manual that is available to all personnel of the HHS-certified laboratory and ensure that it is followed. The SOP manual must be reviewed, signed, and dated by the RP(s) when procedures are first placed into use and when changed or when a new individual assumes responsibility for the management of the HHS-certified laboratory. The SOP must be reviewed and documented by the RP annually.

(d) Maintain a quality assurance program that ensures the proper performance and reporting of all test results; verify and monitor acceptable analytical performance for all controls and calibrators; monitor quality control testing; and document the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(e) Initiate and implement all remedial actions necessary to maintain satisfactory operation and performance of the HHS-certified laboratory in response to the following: quality control systems not within performance specifications; errors in result reporting or in analysis of performance testing samples; and inspection deficiencies. The RP must ensure that specimen results are not reported until all corrective actions have been taken and that the results provided are accurate and reliable.

Section 11.3 What scientific qualifications must the RP have?

The RP must have documented scientific qualifications in analytical toxicology.

Minimum qualifications are:

(a) Certification or licensure as a laboratory director by the state in forensic or clinical laboratory toxicology, a Ph.D. in one of the natural sciences, or training and experience comparable to a Ph.D. in one of the natural sciences with training and laboratory/research experience in

biology, chemistry, and pharmacology or toxicology;

(b) Experience in forensic toxicology with emphasis on the collection and analysis of biological specimens for drugs of abuse;

(c) Experience in forensic applications of analytical toxicology (e.g., publications, court testimony, conducting research on the pharmacology and toxicology of drugs of abuse) or qualify as an expert witness in forensic toxicology;

(d) Fulfillment of the RP responsibilities and qualifications, as demonstrated by the HHS-certified laboratory's performance and verified upon interview by HHS-trained inspectors during each on-site inspection; and

(e) Qualify as a certifying scientist.

Section 11.4 What happens when the RP is absent or leaves an HHS-certified laboratory?

(a) HHS-certified laboratories must have multiple RPs or one RP and an alternate RP. If the RP(s) are concurrently absent, an alternate RP must be present and qualified to fulfill the responsibilities of the RP.

(1) If an HHS-certified laboratory is without the RP and alternate RP for 14 calendar days or less (e.g., temporary absence due to vacation, illness, or business trip), the HHS-certified laboratory may continue operations and testing of Federal agency specimens under the direction of a certifying scientist.

(2) The Secretary, in accordance with these Guidelines, will suspend a laboratory's HHS certification for all specimens if the laboratory does not have an RP or alternate RP for a period of more than 14 calendar days. The suspension will be lifted upon the Secretary's approval of a new permanent RP or alternate RP.

(b) If the RP leaves an HHS-certified laboratory:

(1) The HHS-certified laboratory may maintain certification and continue testing federally regulated specimens under the direction of an alternate RP for a period of up to 180 days while seeking to hire and receive the Secretary's approval of the RP's replacement.

(2) The Secretary, in accordance with these Guidelines, will suspend a laboratory's HHS certification for all federally regulated specimens if the laboratory does not have a permanent RP within 180 days. The suspension will be lifted upon the Secretary's approval of the new permanent RP.

(c) To nominate an individual as an RP or alternate RP, the HHS-certified

laboratory must submit the following documents to the Secretary: the candidate's current resume or curriculum vitae, copies of diplomas and licensures, a training plan (not to exceed 90 days) to transition the candidate into the position, an itemized comparison of the candidate's qualifications to the minimum RP qualifications described in the Guidelines, and have official academic transcript(s) submitted from the candidate's institution(s) of higher learning. The candidate must be found qualified during an on-site inspection of the HHS-certified laboratory.

(d) The HHS-certified laboratory must fulfill additional inspection and PT criteria as required prior to conducting federally regulated testing under a new RP.

Section 11.5 What qualifications must an individual have to certify a result reported by an HHS-certified laboratory?

(a) A certifying scientist must have:

(1) At least a bachelor's degree in the chemical or biological sciences or medical technology, or equivalent;

(2) Training and experience in the analytical methods and forensic procedures used by the HHS-certified laboratory relevant to the results that the individual certifies; and

(3) Training and experience in reviewing and reporting forensic test results and maintaining chain of custody, and an understanding of appropriate remedial actions in response to problems that may arise.

(b) A certifying technician must have:

(1) Training and experience in the analytical methods and forensic procedures used by the HHS-certified laboratory relevant to the results that the individual certifies; and

(2) Training and experience in reviewing and reporting forensic test results and maintaining chain of custody, and an understanding of appropriate remedial actions in response to problems that may arise.

Section 11.6 What qualifications and training must other personnel of an HHS-certified laboratory have?

(a) All HHS-certified laboratory staff (e.g., technicians, administrative staff) must have the appropriate training and skills for the tasks they perform.

(b) Each individual working in an HHS-certified laboratory must be properly trained (i.e., receive training in each area of work that the individual will be performing, including training in forensic procedures related to their job duties) before they are permitted to work independently with federally

regulated specimens. All training must be documented.

Section 11.7 What security measures must an HHS-certified laboratory maintain?

(a) An HHS-certified laboratory must control access to the drug testing facility, specimens, aliquots, and records.

(b) Authorized visitors must be escorted at all times, except for individuals conducting inspections (*i.e.*, for the Department, a federal agency, a state, or other accrediting agency) or emergency personnel (*e.g.*, firefighters and medical rescue teams).

(c) An HHS-certified laboratory must maintain records documenting the identity of the visitor and escort, date, time of entry and exit, and purpose for access to the secured area.

Section 11.8 What are the laboratory chain of custody requirements for specimens and aliquots?

(a) HHS-certified laboratories must use chain of custody procedures (internal and external) to maintain control and accountability of specimens from the time of receipt at the laboratory through completion of testing, reporting of results, during storage, and continuing until final disposition of the specimens.

(b) HHS-certified laboratories must use chain of custody procedures to document the handling and transfer of aliquots throughout the testing process until final disposal.

(c) The chain of custody must be documented using either paper copy or electronic procedures.

(d) Each individual who handles a specimen or aliquot must sign and complete the appropriate entries on the chain of custody form when the specimen or aliquot is handled or transferred, and every individual in the chain must be identified.

(e) The date and purpose must be recorded on an appropriate chain of custody form each time a specimen or aliquot is handled or transferred.

Section 11.9 What test(s) does an HHS-certified laboratory conduct on a urine specimen received from an IITF?

An HHS-certified laboratory must test the specimen in the same manner as a specimen that had not been previously tested.

Section 11.10 What are the requirements for an initial drug test?

(a) An initial drug test may be:

- (1) An immunoassay; or
- (2) An alternate technology (*e.g.*, spectrometry, spectroscopy).

(b) An HHS-certified laboratory must validate an initial drug test before testing specimens.

(c) Initial drug tests must be accurate and reliable for the testing of specimens when identifying drugs or their metabolites.

(d) An HHS-certified laboratory may conduct a second initial drug test using a method with different specificity, to rule out cross-reacting compounds. This second initial drug test must satisfy the batch quality control requirements specified in Section 11.12.

Section 11.11 What must an HHS-certified laboratory do to validate an initial drug test?

(a) An HHS-certified laboratory must demonstrate and document the following for each initial drug test:

- (1) The ability to differentiate negative specimens from those requiring further testing;
- (2) The performance of the test around the cutoff, using samples at several concentrations between 0 and 150 percent of the cutoff;
- (3) The effective concentration range of the test (linearity);
- (4) The potential for carryover;
- (5) The potential for interfering substances; and
- (6) The potential matrix effects if using an alternate technology.

(b) Each new lot of reagent must be verified prior to being placed into service.

(c) Each initial drug test using an alternate technology must be re-verified periodically or at least annually.

Section 11.12 What are the batch quality control requirements when conducting an initial drug test?

(a) Each batch of specimens must contain the following controls:

- (1) At least one control certified to contain no drug or drug metabolite;
- (2) At least one positive control with the drug or drug metabolite targeted at a concentration 25 percent above the cutoff;
- (3) At least one control with the drug or drug metabolite targeted at a concentration 75 percent of the cutoff; and
- (4) At least one control that appears as a donor specimen to the analysts.

(b) Controls must total at least 4 percent of the controls and specimens analyzed in each batch.

Section 11.13 What are the requirements for a confirmatory drug test?

(a) The analytical method must use mass spectrometric identification (*e.g.*, gas chromatography-mass spectrometry

[GC-MS], liquid chromatography-mass spectrometry [LC-MS], GC-MS/MS, LC-MS/MS) or equivalent.

(b) A confirmatory drug test must be validated before it can be used to test federally regulated specimens.

(c) Confirmatory drug tests must be accurate and reliable for the testing of a urine specimen when identifying and quantifying drugs or their metabolites.

Section 11.14 What must an HHS-certified laboratory do to validate a confirmatory drug test?

(a) An HHS-certified laboratory must demonstrate and document the following for each confirmatory drug test:

- (1) The linear range of the analysis;
- (2) The limit of detection;
- (3) The limit of quantification;
- (4) The accuracy and precision at the cutoff;
- (5) The accuracy (bias) and precision at 40 percent of the cutoff;
- (6) The potential for interfering substances;
- (7) The potential for carryover; and
- (8) The potential matrix effects if using liquid chromatography coupled with mass spectrometry.

(b) Each new lot of reagent must be verified prior to being placed into service.

(c) HHS-certified laboratories must re-verify each confirmatory drug test method periodically or at least annually.

Section 11.15 What are the batch quality control requirements when conducting a confirmatory drug test?

(a) At a minimum, each batch of specimens must contain the following calibrators and controls:

- (1) A calibrator at the cutoff;
- (2) At least one control certified to contain no drug or drug metabolite;
- (3) At least one positive control with the drug or drug metabolite targeted at 25 percent above the cutoff; and
- (4) At least one control targeted at or less than 40 percent of the cutoff.

(b) Calibrators and controls must total at least 10 percent of the aliquots analyzed in each batch.

Section 11.16 What are the analytical and quality control requirements for conducting specimen validity tests?

(a) Each invalid, adulterated, or substituted specimen validity test result must be based on an initial specimen validity test on one aliquot and a confirmatory specimen validity test on a second aliquot;

(b) The HHS-certified laboratory must establish acceptance criteria and analyze calibrators and controls as appropriate to verify and document the

validity of the test results (required specimen validity tests are addressed in Section 11.18); and

(c) Controls must be analyzed concurrently with specimens.

Section 11.17 What must an HHS-certified laboratory do to validate a specimen validity test?

An HHS-certified laboratory must demonstrate and document for each specimen validity test the appropriate performance characteristics of the test, and must re-verify the test periodically, or at least annually. Each new lot of reagent must be verified prior to being placed into service.

Section 11.18 What are the requirements for conducting urine specimen validity tests?

An HHS-certified urine laboratory must perform the specimen validity tests specified in Section 3.1(c) and may also perform specimen validity tests in accordance with Section 3.1(d) and Section 3.6.

(a) Each invalid, adulterated, or substituted specimen validity test result must be based on an initial specimen validity test on one aliquot and a confirmatory specimen validity test on a second aliquot.

(b) Controls must be analyzed concurrently with specimens.

(c) The requirements for measuring creatinine concentration are as follows:

(1) The creatinine concentration must be measured to one decimal place on both the initial creatinine test and the confirmatory creatinine test;

(2) The initial creatinine test must have the following calibrators and controls:

- (i) A calibrator at 2 mg/dL;
- (ii) A control in the range of 1.0 mg/dL to 1.5 mg/dL;
- (iii) A control in the range of 3 mg/dL to 20 mg/dL; and
- (iv) A control in the range of 21 mg/dL to 25 mg/dL.

(3) The confirmatory creatinine test (performed on those specimens with a creatinine concentration less than 2 mg/dL on the initial test) must have the following calibrators and controls:

- (i) A calibrator at 2 mg/dL;
- (ii) A control in the range of 1.0 mg/dL to 1.5 mg/dL; and
- (iii) A control in the range of 3 mg/dL to 4 mg/dL.

(d) The requirements for measuring specific gravity are as follows:

(1) For specimens with initial creatinine test results greater than 5 mg/dL and less than 20 mg/dL, laboratories may perform a screening test using a refractometer that measures urine specific gravity to at least three decimal

places to identify specific gravity values that are acceptable (equal to or greater than 1.003) or dilute (equal to or greater than 1.002 and less than 1.003). Specimens must be subjected to an initial specific gravity test using a four decimal place refractometer when the initial creatinine test result is less than or equal to 5 mg/dL or when the screening specific gravity test result using a three decimal place refractometer is less than 1.002.

(2) The screening specific gravity test must have the following calibrators and controls:

- (i) A calibrator or control at 1.000;
- (ii) One control targeted at 1.002;
- (iii) One control in the range of 1.004 to 1.018.

(3) For the initial and confirmatory specific gravity tests, the refractometer must report and display specific gravity to four decimal places. The refractometer must be interfaced with a laboratory information management system (LIMS), computer, and/or generate a paper copy of the digital electronic display to document the numerical values of the specific gravity test results;

(4) The initial and confirmatory specific gravity tests must have the following calibrators and controls:

- (i) A calibrator or control at 1.0000;
- (ii) One control targeted at 1.0020;
- (iii) One control in the range of 1.0040 to 1.0180; and
- (iv) One control equal to or greater than 1.0200 but not greater than 1.0250.

(e) Requirements for measuring pH are as follows:

(1) Colorimetric pH tests that have the dynamic range of 3 to 12 to support the 4 and 11 pH cutoffs and pH meters must be capable of measuring pH to one decimal place. Colorimetric pH tests, dipsticks, and pH paper (*i.e.*, screening tests) that have a narrow dynamic range and do not support the cutoffs may be used only to determine if an initial pH specimen validity test must be performed;

(2) For the initial and confirmatory pH tests, the pH meter must report and display pH to at least one decimal place. The pH meter must be interfaced with a LIMS, computer, and/or generate a paper copy of the digital electronic display to document the numerical values of the pH test results;

(3) pH screening tests must have, at a minimum, the following controls:

- (i) One control below the lower decision point in use;
- (ii) One control between the decision points in use; and
- (iii) One control above the upper decision point in use;

(4) An initial colorimetric pH test must have the following calibrators and controls:

- (i) One calibrator at 4.0;
- (ii) One calibrator at 11.0;
- (iii) One control in the range of 3.0 to 3.8;
- (iv) One control in the range 4.2 to 5.0;
- (v) One control in the range of 5.0 to 9.5;
- (vi) One control in the range of 10.0 to 10.8; and
- (vii) One control in the range of 11.2 to 12.0;

(5) An initial pH meter test, if a pH screening test is not used, must have the following calibrators and controls:

- (i) One calibrator at 3.0;
- (ii) One calibrator at 7.0;
- (iii) One calibrator at 10.0;
- (iv) One control in the range of 3.0 to 3.8;
- (v) One control in the range 4.2 to 5.0;
- (vi) One control in the range of 10.0 to 10.8; and
- (vii) One control in the range of 11.2 to 12.0;

(6) An initial pH meter test (if a pH screening test is used) or confirmatory pH meter test must have the following calibrators and controls when the result of the preceding pH test indicates that the pH is below the lower decision point in use:

- (i) One calibrator at 4.0;
- (ii) One calibrator at 7.0;
- (iii) One control in the range of 3.0 to 3.8; and
- (iv) One control in the range 4.2 to 5.0; and

(7) An initial pH meter test (if a pH screening test is used) or confirmatory pH meter test must have the following calibrators and controls when the result of the preceding pH test indicates that the pH is above the upper decision point in use:

- (i) One calibrator at 7.0;
- (ii) One calibrator at 10.0;
- (iii) One control in the range of 10.0 to 10.8; and
- (iv) One control in the range of 11.2 to 12.0.

(f) Requirements for performing oxidizing adulterant tests are as follows:

(1) The initial test must include an appropriate calibrator at the cutoff specified in Section 11.19(d)(2), (3), or (4) for the compound of interest, a control without the compound of interest (*i.e.*, a certified negative control), and at least one control with one of the compounds of interest at a measurable concentration; and

(2) A confirmatory test for a specific oxidizing adulterant must use a different analytical method than that used for the initial test. Each

confirmatory test batch must include an appropriate calibrator, a control without the compound of interest (*i.e.*, a certified negative control), and a control with the compound of interest at a measurable concentration.

(g) The requirements for measuring the nitrite concentration are that the initial and confirmatory nitrite tests must have a calibrator at the cutoff, a control without nitrite (*i.e.*, certified negative urine), one control in the range of 200 mcg/mL to 250 mcg/mL, and one control in the range of 500 mcg/mL to 625 mcg/mL.

(h) For specimen validity tests other than those above, the laboratory must establish acceptance criteria and analyze calibrators and controls as appropriate to verify and document the validity of the test results.

Section 11.19 What are the requirements for an HHS-certified laboratory to report a test result?

(a) Laboratories must report a test result to the agency's MRO within an average of 5 working days after receipt of the specimen. Reports must use the Federal CCF and/or an electronic report, as described in items p and q below. Before any test result can be reported, it must be certified by a certifying scientist or a certifying technician (as appropriate).

(b) A primary (A) specimen is reported negative when each initial drug test is negative or if the specimen is negative upon confirmatory drug testing, and the specimen does not meet invalid criteria as described in Section 11.19(h)(1) through (13).

(c) A primary (A) specimen is reported positive for a specific drug or drug metabolite when both the initial drug test is positive and the confirmatory drug test is positive in accordance with the cutoffs listed in the drug testing panel.

(d) A primary (A) urine specimen is reported adulterated when:

(1) The pH is less than 4 or equal to or greater than 11 using either a pH meter or a colorimetric pH test for the initial test on the first aliquot and a pH meter for the confirmatory test on the second aliquot;

(2) The nitrite concentration is equal to or greater than 500 mcg/mL using either a nitrite colorimetric test or a general oxidant colorimetric test for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, capillary electrophoresis) on the second aliquot;

(3) The presence of chromium (VI) is verified using either a general oxidant colorimetric test (with an equal to or

greater than 50 mcg/mL chromium (VI)-equivalent cutoff) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL) for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, atomic absorption spectrophotometry, capillary electrophoresis, inductively coupled plasma-mass spectrometry) with the chromium (VI) concentration equal to or greater than the LOQ of the confirmatory test on the second aliquot;

(4) The presence of halogen (*e.g.*, chlorine from bleach, iodine, fluoride) is verified using either a general oxidant colorimetric test (with an equal to or greater than 200 mcg/mL nitrite-equivalent cutoff or an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff) or halogen colorimetric test (halogen concentration equal to or greater than the LOQ) for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, inductively coupled plasma-mass spectrometry) with a specific halogen concentration equal to or greater than the LOQ of the confirmatory test on the second aliquot;

(5) The presence of glutaraldehyde is verified using either an aldehyde test (aldehyde present) or the characteristic immunoassay response on one or more drug immunoassay tests for the initial test on the first aliquot and a different confirmatory method (*e.g.*, GC/MS) for the confirmatory test with the glutaraldehyde concentration equal to or greater than the LOQ of the analysis on the second aliquot;

(6) The presence of pyridine (pyridinium chlorochromate) is verified using either a general oxidant colorimetric test (with an equal to or greater than 200 mcg/mL nitrite-equivalent cutoff or an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL) for the initial test on the first aliquot and a different confirmatory method (*e.g.*, GC/MS) for the confirmatory test with the pyridine concentration equal to or greater than the LOQ of the analysis on the second aliquot;

(7) The presence of a surfactant is verified by using a surfactant colorimetric test with an equal to or greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength

spectrophotometry) with an equal to or greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff on the second aliquot; or

(8) The presence of any other adulterant not specified in Section 11.19(d)(2) through (7) is verified using an initial test on the first aliquot and a different confirmatory test on the second aliquot.

(e) A primary (A) urine specimen is reported substituted when:

(1) The creatinine concentration is less than 2 mg/dL and the specific gravity is less than or equal to 1.0010 or equal to or greater than 1.0200 on both the initial and confirmatory creatinine tests (*i.e.*, the same colorimetric test may be used to test both aliquots) and on both the initial and confirmatory specific gravity tests (*i.e.*, a refractometer is used to test both aliquots) on two separate aliquots; or

(2) A biomarker is not present or is present at a concentration inconsistent with that established for human urine.

(f) A primary (A) urine specimen is reported dilute when the creatinine concentration is equal to or greater than 2 mg/dL but less than 20 mg/dL and the specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.

(g) For a specimen that has an invalid result for one of the reasons stated in Section 11.19(h)(1) and (4) through (13), the HHS-certified laboratory shall contact the MRO and both will decide if testing by another HHS-certified laboratory would be useful in being able to report a positive, adulterated, or substituted result. If no further testing is necessary, the HHS-certified laboratory then reports the invalid result to the MRO.

(h) A primary (A) urine specimen is reported as an invalid result when:

(1) Inconsistent creatinine concentration and specific gravity results are obtained (*i.e.*, the creatinine concentration is less than 2 mg/dL on both the initial and confirmatory creatinine tests and the specific gravity is greater than 1.0010 but less than 1.0200 on the initial and/or confirmatory specific gravity test, the specific gravity is less than or equal to 1.0010 on both the initial and confirmatory specific gravity tests and the creatinine concentration is equal to or greater than 2 mg/dL on either or both the initial or confirmatory creatinine tests). A specimen meeting these criteria may be tested for an HHS-authorized biomarker to determine substitution (see Section 3.8);

(2) The pH is equal to or greater than 4 and less than 4.5 or equal to or greater than 9.5 and less than 11 using either a colorimetric pH test or pH meter for the

initial test and a pH meter for the confirmatory test on two separate aliquots;

(3) The nitrite concentration is equal to or greater than 200 mcg/mL using a nitrite colorimetric test or equal to or greater than the equivalent of 200 mcg/mL nitrite using a general oxidant colorimetric test for both the initial (first) test and the second test or using either initial test and the nitrite concentration is equal to or greater than 200 mcg/mL but less than 500 mcg/mL for a different confirmatory test (e.g., multi-wavelength spectrophotometry, ion chromatography, capillary electrophoresis) on two separate aliquots;

(4) The possible presence of chromium (VI) is determined using the same chromium (VI) colorimetric test with a cutoff equal to or greater than 50 mcg/mL chromium (VI) for both the initial (first) test and the second test on two separate aliquots;

(5) The possible presence of a halogen (e.g., chlorine from bleach, iodine, fluoride) is determined using the same halogen colorimetric test with a cutoff equal to or greater than the LOQ for both the initial (first) test and the second test on two separate aliquots or relying on the odor of the specimen as the initial test;

(6) The possible presence of glutaraldehyde is determined by using the same aldehyde test (aldehyde present) or characteristic immunoassay response on one or more drug immunoassay tests for both the initial (first) test and the second test on two separate aliquots;

(7) The possible presence of an oxidizing adulterant is determined by using the same general oxidant colorimetric test (with an equal to or greater than 200 mcg/mL nitrite-equivalent cutoff, an equal to or greater than 50 mcg/mL chromium (VI)-equivalent cutoff, or a halogen concentration is equal to or greater than the LOQ) for both the initial (first) test and the second test on two separate aliquots;

(8) The possible presence of a surfactant is determined by using the same surfactant colorimetric test with an equal to or greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff for both the initial (first) test and the second test on two separate aliquots or a foam/shake test for the initial test;

(9) Interference occurs on the initial drug tests on two separate aliquots (i.e., valid initial drug test results cannot be obtained);

(10) Interference with the confirmatory drug test occurs on at least two separate aliquots of the specimen

and the HHS-certified laboratory is unable to identify the interfering substance;

(11) The physical appearance of the specimen is such that testing the specimen may damage the laboratory's instruments;

(12) The physical appearances of the A and B specimens are clearly different (note: A is tested); or

(13) A specimen validity test (i.e., other than the tests listed above) on two separate aliquots of the specimen indicates that the specimen is not valid for testing.

(i) An HHS-certified laboratory shall reject a primary (A) specimen for testing when a fatal flaw occurs as described in Section 15.1 or when a correctable flaw as described in Section 15.2 is not recovered. The HHS-certified laboratory will indicate on the federal CCF that the specimen was rejected for testing and provide the reason for reporting the rejected for testing result.

(j) An HHS-certified laboratory must report all positive, adulterated, substituted, and invalid test results for a urine specimen. For example, a specimen can be positive for a drug and adulterated.

(k) An HHS-certified laboratory must report the confirmatory concentration of each drug or drug metabolite reported for a positive result.

(l) An HHS-certified laboratory must report numerical values of the specimen validity test results that support an adulterated, substituted, or invalid result (as appropriate).

(m) An HHS-certified laboratory must report results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

(n) When the concentration of a drug or drug metabolite exceeds the validated linear range of the confirmatory test, HHS-certified laboratories may report to the MRO that the quantitative value exceeds the linear range of the test or that the quantitative value is greater than "insert the actual value for the upper limit of the linear range," or laboratories may report a quantitative value above the upper limit of the linear range that was obtained by diluting an aliquot of the specimen to achieve a result within the method's linear range and multiplying the result by the appropriate dilution factor.

(o) HHS-certified laboratories may transmit test results to the MRO by various electronic means (e.g., fax, computer). Transmissions of the reports must ensure confidentiality and the results may not be reported verbally by telephone. Laboratories and external service providers must ensure the confidentiality, integrity, and

availability of the data and limit access to any data transmission, storage, and retrieval system.

(p) HHS-certified laboratories must fax, courier, mail, or electronically transmit a legible image or copy of the completed federal CCF and/or forward a computer-generated electronic report. The computer-generated report must contain sufficient information to ensure that the test results can accurately represent the content of the custody and control form that the MRO received from the collector.

(q) For positive, adulterated, substituted, invalid, and rejected specimens, laboratories must fax, courier, mail, or electronically transmit a legible image or copy of the completed federal CCF.

Section 11.20 How long must an HHS-certified laboratory retain specimens?

(a) An HHS-certified laboratory must retain specimens that were reported as positive, adulterated, substituted, or as an invalid result for a minimum of 1 year.

(b) Retained urine specimens must be kept in secured frozen storage (-20°C or less) to ensure their availability for retesting during an administrative or judicial proceeding.

(c) Federal agencies may request that the HHS-certified laboratory retain a specimen for an additional specified period of time and must make that request within the 1-year period following the laboratory's reporting of the specimen.

Section 11.21 How long must an HHS-certified laboratory retain records?

(a) An HHS-certified laboratory must retain all records generated to support test results for at least 2 years. The laboratory may convert hardcopy records to electronic records for storage and then discard the hardcopy records after 6 months.

(b) A federal agency may request the HHS-certified laboratory to maintain a documentation package (as described in Section 11.23) that supports the chain of custody, testing, and reporting of a donor's specimen that is under legal challenge by a donor. The federal agency's request to the laboratory must be in writing and must specify the period of time to maintain the documentation package.

(c) An HHS-certified laboratory may retain records other than those included in the documentation package beyond the normal 2-year period of time.

Section 11.22 What statistical summary reports must an HHS-certified laboratory provide for urine testing?

(a) HHS-certified laboratories must provide to each federal agency for which they perform testing a semiannual statistical summary report that must be submitted by mail, fax, or email within 14 working days after the end of the semiannual period. The summary report must not include any personally identifiable information. A copy of the semiannual statistical summary report will also be sent to the Secretary or designated HHS representative. The semiannual statistical report contains the following information:

- (1) Reporting period (inclusive dates);
- (2) HHS-certified laboratory name and address;
- (3) Federal agency name;
- (4) Number of specimen results reported;
- (5) Number of specimens collected by reason for test;
- (6) Number of specimens reported negative and the number reported negative/dilute;
- (7) Number of specimens rejected for testing because of a fatal flaw;
- (8) Number of specimens rejected for testing because of an uncorrected flaw;
- (9) Number of specimens tested positive by each initial drug test;
- (10) Number of specimens reported positive;
- (11) Number of specimens reported positive for each drug and drug metabolite;
- (12) Number of specimens reported adulterated;
- (13) Number of specimens reported substituted; and
- (14) Number of specimens reported as invalid result.

(b) An HHS-certified laboratory must make copies of an agency's test results available when requested to do so by the Secretary or by the federal agency for which the laboratory is performing drug-testing services.

(c) An HHS-certified laboratory must ensure that a qualified individual is available to testify in a proceeding against a Federal employee when the proceeding is based on a test result reported by the laboratory.

Section 11.23 What HHS-certified laboratory information is available to a federal agency?

(a) Following a federal agency's receipt of a positive, adulterated, or substituted drug test report, the federal agency may submit a written request for copies of the records relating to the drug test results or a documentation package

or any relevant certification, review, or revocation of certification records.

(b) Standard documentation packages provided by an HHS-certified laboratory must contain the following items:

- (1) A cover sheet providing a brief description of the procedures and tests performed on the donor's specimen;
- (2) A table of contents that lists all documents and materials in the package by page number;
- (3) A copy of the federal CCF with any attachments, internal chain of custody records for the specimen, memoranda (if any) generated by the HHS-certified laboratory, and a copy of the electronic report (if any) generated by the HHS-certified laboratory;
- (4) A brief description of the HHS-certified laboratory's initial drug and specimen validity testing procedures, instrumentation, and batch quality control requirements;
- (5) Copies of the initial test data for the donor's specimen with all calibrators and controls and copies of all internal chain of custody documents related to the initial tests;
- (6) A brief description of the HHS-certified laboratory's confirmatory drug (and specimen validity, if applicable) testing procedures, instrumentation, and batch quality control requirements;
- (7) Copies of the confirmatory test data for the donor's specimen with all calibrators and controls and copies of all internal chain of custody documents related to the confirmatory tests; and
- (8) Copies of the résumé or curriculum vitae for the RP(s) and the certifying technician or certifying scientist of record.

Section 11.24 What HHS-certified laboratory information is available to a federal applicant or employee?

Federal applicants or employees who are subject to a workplace drug test may submit a written request through the MRO and/or the federal agency requesting copies of any records relating to their drug test results or a documentation package as described in Section 11.23(b) and any relevant certification, review, or revocation of certification records. Federal applicants or employees, or their designees, are not permitted access to their specimens collected pursuant to Executive Order 12564, Public Law 100-71, and these Guidelines.

Section 11.25 What types of relationships are prohibited between an HHS-certified laboratory and an MRO?

An HHS-certified laboratory must not enter into any relationship with a federal agency's MRO that may be construed as a potential conflict of

interest or derive any financial benefit by having a federal agency use a specific MRO.

This means an MRO may be an employee of the agency or a contractor for the agency; however, an MRO shall not be an employee or agent of or have any financial interest in the HHS-certified laboratory for which the MRO is reviewing drug testing results. Additionally, an MRO shall not derive any financial benefit by having an agency use a specific HHS-certified laboratory or have any agreement with an HHS-certified laboratory that may be construed as a potential conflict of interest.

Section 11.26 What type of relationship can exist between an HHS-certified laboratory and an HHS-certified IITF?

An HHS-certified laboratory can enter into any relationship with an HHS-certified IITF.

Subpart L—Instrumented Initial Test Facility (IITF)

Section 12.1 What must be included in the HHS-certified IITF's standard operating procedure manual?

(a) An HHS-certified IITF must have a standard operating procedure (SOP) manual that describes, in detail, all HHS-certified IITF operations. When followed, the SOP manual ensures that all specimens are tested consistently using the same procedures.

(b) The SOP manual must include at a minimum, but is not limited to, a detailed description of the following:

- (1) Chain of custody procedures;
- (2) Accessioning;
- (3) Security;
- (4) Quality control/quality assurance programs;
- (5) Analytical methods and procedures;
- (6) Equipment and maintenance programs;
- (7) Personnel training;
- (8) Reporting procedures; and
- (9) Computers, software, and laboratory information management systems.

(c) All procedures in the SOP manual must be compliant with these Guidelines and all guidance provided by the Secretary.

(d) A copy of all procedures that have been replaced or revised and the dates on which the procedures were in effect must be maintained for two years.

Section 12.2 What are the responsibilities of the responsible technician (RT)?

(a) Manage the day-to-day operations of the HHS-certified IITF even if another

individual has overall responsibility for alternate areas of a multi-specialty facility.

(b) Ensure that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the HHS-certified IITF. The RT must ensure the continued competency of IITF personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(c) Maintain a complete and current SOP manual that is available to all personnel of the HHS-certified IITF, and ensure that it is followed. The SOP manual must be reviewed, signed, and dated by the RT when procedures are first placed into use or changed or when a new individual assumes responsibility for the management of the HHS-certified IITF. The SOP must be reviewed and documented by the RT annually.

(d) Maintain a quality assurance program that ensures the proper performance and reporting of all test results; verify and monitor acceptable analytical performance for all controls and calibrators; monitor quality control testing; and document the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(e) Initiate and implement all remedial actions necessary to maintain satisfactory operation and performance of the HHS-certified IITF in response to the following: quality control systems not within performance specifications, errors in result reporting or in analysis of performance testing samples, and inspection deficiencies. The RT must ensure that specimen results are not reported until all corrective actions have been taken and that the results provided are accurate and reliable.

Section 12.3 What qualifications must the RT have?

An RT must:

(a) Have at least a bachelor's degree in the chemical or biological sciences or medical technology, or equivalent;

(b) Have training and experience in the analytical methods and forensic procedures used by the HHS-certified IITF;

(c) Have training and experience in reviewing and reporting forensic test results and maintaining chain of custody, and an understanding of appropriate remedial actions in response to problems that may arise;

(d) Be found to fulfill RT responsibilities and qualifications, as demonstrated by the HHS-certified IITF's performance and verified upon interview by HHS-trained inspectors during each on-site inspection; and

(e) Qualify as a certifying technician.

Section 12.4 What happens when the RT is absent or leaves an HHS-certified IITF?

(a) HHS-certified IITFs must have an RT and an alternate RT. When an RT is absent, an alternate RT must be present and qualified to fulfill the responsibilities of the RT.

(1) If an HHS-certified IITF is without the RT and alternate RT for 14 calendar days or less (e.g., temporary absence due to vacation, illness, business trip), the HHS-certified IITF may continue operations and testing of Federal agency specimens under the direction of a certifying technician.

(2) The Secretary, in accordance with these Guidelines, will suspend an IITF's HHS certification for all specimens if the IITF does not have an RT or alternate RT for a period of more than 14 calendar days. The suspension will be lifted upon the Secretary's approval of a new permanent RT or alternate RT.

(b) If the RT leaves an HHS-certified IITF:

(1) The HHS-certified IITF may maintain certification and continue testing federally regulated specimens under the direction of an alternate RT for a period of up to 180 days while seeking to hire and receive the Secretary's approval of the RT's replacement.

(2) The Secretary, in accordance with these Guidelines, will suspend an IITF's HHS certification for all federally regulated specimens if the IITF does not have a permanent RT within 180 days. The suspension will be lifted upon the Secretary's approval of the new permanent RT.

(c) To nominate an individual as the RT or alternate RT, the HHS-certified IITF must submit the following documents to the Secretary: the candidate's current resume or curriculum vitae, copies of diplomas and licensures, a training plan (not to exceed 90 days) to transition the candidate into the position, an itemized comparison of the candidate's qualifications to the minimum RT qualifications described in the Guidelines, and have official academic transcript(s) submitted from the candidate's institution(s) of higher learning. The candidate must be found qualified during an on-site inspection of the HHS-certified IITF.

(d) The HHS-certified IITF must fulfill additional inspection and PT criteria as required prior to conducting federally regulated testing under a new RT.

Section 12.5 What qualifications must an individual have to certify a result reported by an HHS-certified IITF?

A certifying technician must have:

(a) Training and experience in the analytical methods and forensic procedures used by the HHS-certified IITF relevant to the results that the individual certifies; and

(b) Training and experience in reviewing and reporting forensic test results and maintaining chain of custody, and an understanding of appropriate remedial actions in response to problems that may arise.

Section 12.6 What qualifications and training must other personnel of an HHS-certified IITF have?

(a) All HHS-certified IITF staff (e.g., technicians, administrative staff) must have the appropriate training and skills for the tasks they perform.

(b) Each individual working in an HHS-certified IITF must be properly trained (i.e., receive training in each area of work that the individual will be performing, including training in forensic procedures related to their job duties) before they are permitted to work independently with federally regulated specimens. All training must be documented.

Section 12.7 What security measures must an HHS-certified IITF maintain?

(a) An HHS-certified IITF must control access to the drug testing facility, specimens, aliquots, and records.

(b) Authorized visitors must be escorted at all times except for individuals conducting inspections (i.e., for the Department, a Federal agency, a state, or other accrediting agency) or emergency personnel (e.g., firefighters and medical rescue teams).

(c) An HHS-certified IITF must maintain records documenting the identity of the visitor and escort, date, time of entry and exit, and purpose for the access to the secured area.

Section 12.8 What are the IITF chain of custody requirements for specimens and aliquots?

(a) HHS-certified IITFs must use chain of custody procedures (internal and external) to maintain control and accountability of specimens from the time of receipt at the IITF through completion of testing, reporting of results, during storage, and continuing until final disposition of the specimens.

(b) HHS-certified IITFs must use chain of custody procedures to document the handling and transfer of aliquots throughout the testing process until final disposal.

(c) The chain of custody must be documented using either paper copy or electronic procedures.

(d) Each individual who handles a specimen or aliquot must sign and complete the appropriate entries on the chain of custody form when the specimen or aliquot is handled or transferred, and every individual in the chain must be identified.

(e) The date and purpose must be recorded on an appropriate chain of custody form each time a specimen or aliquot is handled or transferred.

Section 12.9 What are the requirements for an initial drug test?

(a) An initial drug test may be:

(1) An immunoassay; or

(2) An alternate technology (e.g., spectrometry, spectroscopy).

(b) An HHS-certified IITF must validate an initial drug test before testing specimens;

(c) Initial drug tests must be accurate and reliable for the testing of urine specimens when identifying drugs or their metabolites.

(d) An HHS-certified IITF may conduct a second initial drug test using a method with different specificity, to rule out cross-reacting compounds. This second initial drug test must satisfy the batch quality control requirements specified in Section 12.11.

Section 12.10 What must an HHS-certified IITF do to validate an initial drug test?

(a) An HHS-certified IITF must demonstrate and document the following for each initial drug test:

(1) The ability to differentiate negative specimens from those requiring further testing;

(2) The performance of the test around the cutoff, using samples at several concentrations between 0 and 150 percent of the cutoff;

(3) The effective concentration range of the test (linearity);

(4) The potential for carryover;

(5) The potential for interfering substances; and

(6) The potential matrix effects if using an alternate technology.

(b) Each new lot of reagent must be verified prior to being placed into service.

(c) Each initial drug test using an alternate technology must be re-verified periodically or at least annually.

Section 12.11 What are the batch quality control requirements when conducting an initial drug test?

(a) Each batch of specimens must contain the following calibrators and controls:

(1) At least one control certified to contain no drug or drug metabolite;

(2) At least one positive control with the drug or drug metabolite targeted at

a concentration 25 percent above the cutoff;

(3) At least one control with the drug or drug metabolite targeted at a concentration 75 percent of the cutoff; and

(4) At least one control that appears as a donor specimen to the analysts.

(b) Controls must total at least 4 percent of the controls and specimens analyzed in each batch.

Section 12.12 What are the analytical and quality control requirements for conducting specimen validity tests?

(a) Each specimen validity test result must be based on performing a single test on one aliquot;

(b) The HHS-certified IITF must establish acceptance criteria and analyze calibrators and controls as appropriate to verify and document the validity of the test results in accordance with Section 12.14; and

(c) Controls must be analyzed concurrently with specimens.

Section 12.13 What must an HHS-certified IITF do to validate a specimen validity test?

An HHS-certified IITF must demonstrate and document for each specimen validity test the appropriate performance characteristics of the test, and must re-verify the test periodically, or at least annually. Each new lot of reagent must be verified prior to being placed into service.

Section 12.14 What are the requirements for conducting each specimen validity test?

An HHS-certified urine IITF must perform the specimen validity tests specified in Section 3.1(c) and may also perform specimen validity tests in accordance with Section 3.1(d).

(a) Controls must be analyzed concurrently with specimens.

(b) The requirements for measuring creatinine concentration are as follows:

(1) The creatinine concentration must be measured to one decimal place on the test;

(2) The creatinine test must have the following calibrators and controls:

(i) A calibrator at 2 mg/dL;

(ii) A control in the range of 1.0 mg/dL to 1.5 mg/dL;

(iii) A control in the range of 3.0 mg/dL to 20 mg/dL; and

(iv) A control in the range of 21 mg/dL to 25 mg/dL.

(c) The requirements for measuring specific gravity are as follows:

(1) For specimens with creatinine test results greater than 5 mg/dL and less than 20 mg/dL, an IITF must perform a screening test using a refractometer to

identify specific gravity values that are acceptable (equal to or greater than 1.003) or dilute (equal to or greater than 1.002 and less than 1.003). Specimens must be forwarded to an HHS-certified laboratory when the creatinine test result is less than or equal to 5 mg/dL or when the screening specific gravity test result is less than 1.002.

(2) The screening specific gravity test must have the following calibrators and controls:

(i) A calibrator or control at 1.000;

(ii) One control targeted at 1.002; and

(iii) One control in the range of 1.004 to 1.018.

(d) The requirements for measuring pH are as follows:

(1) The IITF may perform the pH test using a pH meter, colorimetric pH test, dipsticks, or pH paper. Specimens must be forwarded to an HHS-certified laboratory when the pH is less than 4.5 or equal to or greater than 9.5.

(2) The pH test must have, at a minimum, the following calibrators and controls:

(i) One control below 4.5;

(ii) One control between 4.5 and 9.5;

(iii) One control above 9.5; and

(iv) One or more calibrators as appropriate for the test. For a pH meter: calibrators at 4.0, 7.0, and 10.

(e) The requirements for measuring the nitrite concentration are that the nitrite test must have a calibrator at 200 mcg/mL nitrite, a control without nitrite (i.e., certified negative urine), one control in the range of 200 mcg/mL to 250 mcg/mL, and one control in the range of 500 mcg/mL to 625 mcg/mL. Specimens with a nitrite concentration equal to or greater than 200 mcg/mL must be forwarded to an HHS-certified laboratory; and,

(f) Requirements for performing oxidizing adulterant tests are that the test must include an appropriate calibrator at the cutoff specified in Section 11.19(d)(3), (4), or (6) for the compound of interest, a control without the compound of interest (i.e., a certified negative control), and at least one control with one of the compounds of interest at a measurable concentration. Specimens with an oxidizing adulterant result equal to or greater than the cutoff must be forwarded to an HHS-certified laboratory.

Section 12.15 What are the requirements for an HHS-certified IITF to report a test result?

(a) An HHS-certified IITF must report a test result to the agency's MRO within an average of 3 working days after receipt of the specimen. Reports must use the federal CCF and/or an electronic

report. Before any test result can be reported, it must be certified by a certifying technician.

(b) A primary (A) specimen is reported negative when each drug test is negative and each specimen validity test result indicates that the specimen is a valid urine specimen.

(c) A primary (A) urine specimen is reported dilute when the creatinine concentration is greater than 5 mg/dL but less than 20 mg/dL and the specific gravity is equal to or greater than 1.002 but less than 1.003.

(d) An HHS-certified IITF shall reject a urine specimen for testing when a fatal flaw occurs as described in Section 15.1 or when a correctable flaw as described in Section 15.2 is not recovered. The HHS-certified IITF will indicate on the federal CCF that the specimen was rejected for testing and provide the reason for reporting the rejected for testing result.

(e) An HHS-certified IITF must report results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

(f) HHS-certified IITFs may transmit test results to the MRO by various electronic means (e.g., fax, computer). Transmissions of the reports must ensure confidentiality and the results may not be reported verbally by telephone. IITFs and external service providers must ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

(g) HHS-certified IITFs must fax, courier, mail, or electronically transmit a legible image or copy of the completed Federal CCF and/or forward a computer-generated electronic report. The computer-generated report must contain sufficient information to ensure that the test results can accurately represent the content of the custody and control form that the MRO received from the collector.

(h) For rejected specimens, IITFs must fax, courier, mail, or electronically transmit a legible image or copy of the completed Federal CCF.

Section 12.16 *How does an HHS-certified IITF handle a specimen that tested positive, adulterated, substituted, or invalid at the IITF?*

(a) The remaining specimen is resealed using a tamper-evident label/seal;

(b) The individual resealing the remaining specimen initials and dates the tamper-evident label/seal; and

(c) The resealed specimen and split specimen and the federal CCF are sealed in a leak-proof plastic bag, and are sent

to an HHS-certified laboratory under chain of custody within one day after completing the drug and specimen validity tests.

Section 12.17 *How long must an HHS-certified IITF retain a specimen?*

A specimen that is negative, negative/dilute, or rejected for testing is discarded.

Section 12.18 *How long must an HHS-certified IITF retain records?*

(a) An HHS-certified IITF must retain all records generated to support test results for at least 2 years. The IITF may convert hardcopy records to electronic records for storage and then discard the hardcopy records after six months.

(b) A federal agency may request the HHS-certified IITF to maintain a documentation package (as described in Section 12.20) that supports the chain of custody, testing, and reporting of a donor's specimen that is under legal challenge by a donor. The federal agency's request to the IITF must be in writing and must specify the period of time to maintain the documentation package.

(c) An HHS-certified IITF may retain records other than those included in the documentation package beyond the normal two-year period of time.

Section 12.19 *What statistical summary reports must an HHS-certified IITF provide?*

(a) HHS-certified IITFs must provide to each federal agency for which they perform testing a semiannual statistical summary report that must be submitted by mail, fax, or email within 14 working days after the end of the semiannual period. The summary report must not include any personally identifiable information. A copy of the semiannual statistical summary report will also be sent to the Secretary or designated HHS representative. The semiannual statistical report contains the following information:

- (1) Reporting period (inclusive dates);
- (2) HHS-certified IITF name and address;
- (3) Federal agency name;
- (4) Total number of specimens tested;
- (5) Number of specimens collected by reason for test;
- (6) Number of specimens reported negative and the number reported negative/dilute;
- (7) Number of specimens rejected for testing because of a fatal flaw;
- (8) Number of specimens rejected for testing because of an uncorrected flaw;
- (9) Number of specimens tested positive by each initial drug test; and

(10) Number of specimens forwarded to an HHS-certified laboratory for testing.

(b) An HHS-certified IITF must make copies of an agency's test results available when requested to do so by the Secretary or by the federal agency for which the IITF is performing drug-testing services.

(c) An HHS-certified IITF must ensure that a qualified individual is available to testify in a proceeding against a federal employee when the proceeding is based on a test result reported by the IITF.

Section 12.20 *What HHS-certified IITF information is available to a federal agency?*

(a) Following a federal agency's receipt of a positive, adulterated, or substituted drug test report from a laboratory, the federal agency may submit a written request for copies of the IITF records relating to the drug test results or a documentation package or any relevant certification, review, or revocation of certification records.

(b) Standard documentation packages provided by an HHS-certified IITF must contain the following items:

- (1) A cover sheet providing a brief description of the procedures and tests performed on the donor's specimen;
- (2) A table of contents that lists all documents and materials in the package by page number;
- (3) A copy of the federal CCF with any attachments, internal chain of custody records for the specimen, memoranda (if any) generated by the HHS-certified IITF, and a copy of the electronic report (if any) generated by the HHS-certified IITF;
- (4) A brief description of the HHS-certified IITF's drug and specimen validity testing procedures, instrumentation, and batch quality control requirements;
- (5) Copies of all test data for the donor's specimen with all calibrators and controls and copies of all internal chain of custody documents related to the tests; and
- (6) Copies of the résumé or curriculum vitae for the RT and for the certifying technician of record.

Section 12.21 *What HHS-certified IITF information is available to a federal applicant or employee?*

Federal applicants or employees who are subject to a drug test may provide a written request through the MRO and/or the federal agency requesting access to any records relating to their drug test results or a documentation package (as described in Section 12.20) and any relevant certification, review, or revocation of certification records.

Section 12.22 What types of relationships are prohibited between an HHS-certified IITF and an MRO?

An HHS-certified IITF must not enter into any relationship with a federal agency's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having a federal agency use a specific MRO.

This means an MRO may be an employee of the agency or a contractor for the agency; however, an MRO shall not be an employee or agent of or have any financial interest in the HHS-certified IITF for which the MRO is reviewing drug testing results. Additionally, an MRO shall not derive any financial benefit by having an agency use a specific HHS-certified IITF or have any agreement with an HHS-certified IITF that may be construed as a potential conflict of interest.

Section 12.23 What type of relationship can exist between an HHS-certified IITF and an HHS-certified laboratory?

An HHS-certified IITF can enter into any relationship with an HHS-certified laboratory.

Subpart M—Medical Review Officer (MRO)

Section 13.1 Who may serve as an MRO?

(a) A currently licensed physician who has:

- (1) A Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) degree;
- (2) Knowledge regarding the pharmacology and toxicology of illicit drugs;

(3) The training necessary to serve as an MRO as set out in Section 13.3;

(4) Satisfactorily passed an initial examination administered by a nationally recognized entity or a subspecialty board that has been approved by the Secretary to certify MROs; and

(5) At least every five years from initial certification, completed requalification training on the topics in Section 13.3 and satisfactorily passed a requalification examination administered by a nationally recognized entity or a subspecialty board that has been approved by the Secretary to certify MROs.

Section 13.2 How are nationally recognized entities or subspecialty boards that certify MROs approved?

All nationally recognized entities or subspecialty boards which seek approval by the Secretary to certify physicians as MROs for federal workplace drug testing programs must

submit their qualifications, a sample examination, and other necessary supporting examination materials (e.g., answers, previous examination statistics or other background examination information, if requested). Approval will be based on an objective review of qualifications that include a copy of the MRO applicant application form, documentation that the continuing education courses are accredited by a professional organization, and the delivery method and content of the examination. Each approved MRO certification entity must resubmit their qualifications for approval every two years. The Secretary shall publish at least every two years a notification in the **Federal Register** listing those entities and subspecialty boards that have been approved.

Section 13.3 What training is required before a physician may serve as an MRO?

(a) A physician must receive training that includes a thorough review of the following:

- (1) The collection procedures used to collect federal agency specimens;
- (2) How to interpret test results reported by HHS-certified IITFs and laboratories (e.g., negative, negative/dilute, positive, adulterated, substituted, rejected for testing, and invalid);
- (3) Chain of custody, reporting, and recordkeeping requirements for federal agency specimens;

(4) The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs for all authorized specimen types; and

(5) Procedures for interpretation, review (e.g., donor interview for legitimate medical explanations, review of documentation provided by the donor to support a legitimate medical explanation), and reporting of results specified by any federal agency for which the individual may serve as an MRO;

(b) Certified MROs must complete training on any revisions to these Guidelines including any changes to the drug and biomarker testing panels prior to their effective date, to continue serving as an MRO for federal agency specimens.

Section 13.4 What are the responsibilities of an MRO?

(a) The MRO must review all positive, adulterated, rejected for testing, invalid, and substituted test results.

(b) Staff under the direct, personal supervision of the MRO may review and report negative and (for urine) negative/dilute test results to the agency's designated representative. The MRO

must review at least 5 percent of all negative results reported by the MRO staff to ensure that the MRO staff are properly performing the review process.

(c) The MRO must discuss potential invalid results with the HHS-certified laboratory, as addressed in Section 11.19(g) to determine whether testing at another HHS-certified laboratory may be warranted.

(d) After receiving a report from an HHS-certified laboratory or (for urine) HHS-certified IITF, the MRO must:

(1) Review the information on the MRO copy of the federal CCF that was received from the collector and the report received from the HHS-certified laboratory or HHS-certified IITF;

(2) Interview the donor when required;

(3) Make a determination regarding the test result; and

(4) Report the verified result to the federal agency.

(e) The MRO must maintain records for a minimum of two years while maintaining the confidentiality of the information. The MRO may convert hardcopy records to electronic records for storage and discard the hardcopy records after six months.

(f) The MRO must conduct a medical examination or a review of the examining physician's findings and make a determination of refusal to test or cancelled test when a collector reports that the donor was unable to provide a specimen and an alternate specimen was not collected, as addressed in Sections 8.6 and 13.6.

Section 13.5 What must an MRO do when reviewing a urine specimen's test results?

(a) When the HHS-certified laboratory or HHS-certified IITF reports a negative result for the primary (A) specimen, the MRO reports a negative result to the agency.

(b) When the HHS-certified laboratory or HHS-certified IITF reports a negative/dilute result for the primary (A) urine specimen, the MRO reports a negative/dilute result to the agency and directs the agency to immediately collect another specimen from the donor.

(1) If the recollected specimen provides a negative or negative/dilute result, the MRO reports a negative result to the agency, with no further action required.

(2) If the recollected specimen provides a result other than negative or negative/dilute, the MRO follows the procedures in Section 13.5(c) through (f) for the recollected specimen.

(c) When the HHS-certified laboratory reports multiple results for the primary (A) urine specimen, the MRO must

follow the verification procedures described in Section 13.5(d) through (f) and:

(1) The MRO reports all verified positive and/or refusal to test results to the federal agency.

(2) If an invalid result was reported in conjunction with a positive, adulterated, or substituted result, the MRO does not report the verified invalid result to the Federal agency at this time. The MRO takes action for the verified invalid result(s) for the primary (A) specimen as described in Section 13.5(f) only when:

(i) The MRO verifies the positive, adulterated, or substituted result as negative based on a legitimate medical explanation as described in Section 13.5(d)(2) and (e)(1); or

(ii) The split (B) specimen is tested and reported as a failure to reconfirm the positive, adulterated, or substituted result as described in Section 14.6(m).

(d) When the HHS-certified laboratory reports a positive result for the primary (A) specimen, the MRO must contact the donor to determine if there is any legitimate medical explanation for the positive result.

(1) If the donor admits unauthorized use of the drug(s) that caused the positive result, the MRO reports the test result as positive to the agency. The MRO must document the donor's admission of unauthorized drug use in the MRO records and in the MRO's report to the federal agency.

(2) If the donor provides documentation (e.g., a valid prescription) to support a legitimate medical explanation for the positive result, the MRO reports the test result as negative to the agency. If the laboratory also reports that the urine specimen is dilute, the MRO reports a negative/dilute result to the agency and directs the agency to immediately collect another specimen from the donor. The MRO follows the procedures in Section 13.5(b)(1) or (2) for the recollected specimen.

(i) Passive exposure to a drug (e.g., exposure to marijuana smoke) is not a legitimate medical explanation for a positive drug test result.

(ii) Ingestion of food products containing a drug (e.g., products containing marijuana, poppy seeds containing codeine and/or morphine) is not a legitimate medical explanation for a positive urine drug test result.

(iii) A physician's authorization or medical recommendation for a Schedule 1 controlled substance is not a legitimate medical explanation for a positive drug test result.

(3) If the donor is unable to provide a legitimate medical explanation for the positive result, the MRO reports the

positive result to the agency. If the laboratory also reports that the urine specimen is dilute, the MRO may choose not to report the dilute result.

(e) When the HHS-certified laboratory reports an adulterated or substituted result for the primary (A) urine specimen, the MRO contacts the donor to determine if the donor has a legitimate medical explanation for the adulterated or substituted result.

(1) If the donor provides a legitimate medical explanation, the MRO reports a negative result to the Federal agency.

(2) If the donor is unable to provide a legitimate medical explanation, the MRO reports a refusal to test to the federal agency because the urine specimen was adulterated or substituted.

(f) When the HHS-certified laboratory reports an invalid result for the primary (A) urine specimen, the MRO must contact the donor to determine if there is a legitimate explanation for the invalid result.

(1) If the donor provides a legitimate explanation (e.g., a prescription medicine), the MRO reports a test cancelled result with the reason for the invalid result and informs the federal agency that there is a legitimate explanation for the invalid result.

(i) For a random, post-accident, or reasonable suspicion/cause test, the MRO informs the agency that a recollection is not required.

(ii) If a negative result is required (i.e., for a pre-employment, return-to-duty, or follow-up test), the MRO directs the agency to immediately collect another specimen from the donor (i.e., either an unobserved urine collection or an oral fluid collection, depending on the reason for the invalid result).

(2) If the donor is unable to provide a legitimate explanation for an invalid result, the MRO reports a test cancelled result with the reason for the invalid result and directs the federal agency to immediately collect another urine specimen from the donor using a direct observed collection.

(i) If the specimen collected under direct observation provides a valid result, the MRO follows the procedures in Section 13.5(a) through (e).

(ii) If the specimen collected under direct observation provides an invalid result, the MRO reports this specimen as test cancelled and recommends that the agency collect another authorized specimen type (e.g., oral fluid). If the federal agency does not authorize collection of another specimen type, the MRO consults with the agency to arrange a clinical evaluation as described in Section 13.7, to determine

whether there is a legitimate medical reason for the invalid result.

(g) When two separate specimens collected during the same testing event were sent to the HHS-certified laboratory for testing (e.g., the collector sent a urine specimen out of temperature range and the subsequently collected specimen—urine or another authorized specimen type), the MRO must follow the verification procedures described in Sections 13.4, 13.5, and 13.6, and:

(1) If both specimens were verified negative, the MRO reports the result as negative.

(2) If one specimen was verified negative and the other was not (i.e., the specimen was verified as negative/dilute or as positive, adulterated, substituted, and/or invalid), the MRO reports only the verified result(s) other than negative. For example, if the MRO verified one specimen as negative and the other as a refusal to test because the specimen was substituted, the MRO reports only the refusal to the federal agency.

(3) If both specimens were verified as positive, adulterated, and/or substituted, the MRO reports all results. For example, if the MRO verified one specimen as positive and the other as a refusal to test because the specimen was adulterated, the MRO reports the positive and the refusal results to the federal agency.

(4) If one specimen has been verified and the HHS-certified laboratory has not reported the result(s) of the other specimen, the MRO:

(i) Reports verified result(s) of positive, adulterated, or substituted immediately and does not wait to receive the result(s) of the other specimen.

(ii) Does not report a verified result of negative, negative/dilute, or invalid for the first specimen to the federal agency. The MRO holds the report until results of both specimens have been received and verified (see item 2 above).

(5) When the HHS-certified laboratory reports an invalid result for one or both specimens, the MRO follows the procedures in Section 13.5(c).

(h) When the HHS-certified laboratory or HHS-certified IITF reports a rejected for testing result for the primary (A) specimen, the MRO reports a test cancelled result to the agency and recommends that the agency collect another specimen from the donor. The recollected specimen must be the same type (i.e., urine).

Section 13.6 What action does the MRO take when the collector reports that the donor did not provide a sufficient amount of urine for a drug test?

(a) When another specimen type (e.g., oral fluid) was collected in accordance with Section 8.6, the MRO reviews and reports the test result in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using the alternate specimen.

(b) When the federal agency did not authorize the collection of an alternate specimen, the MRO consults with the federal agency. The federal agency immediately directs the donor to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the donor's failure to provide a specimen. The MRO may perform this evaluation if the MRO has appropriate expertise.

(1) For purposes of this section, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration. Permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genitourinary matters. Acute or temporary medical conditions, such as cystitis, urethritis, or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in the previous sentence.

(2) If a physician other than the MRO will perform the evaluation, the MRO must provide the other physician with the following information and instructions:

(i) That the donor was required to take a federally regulated drug test, but was unable to provide a sufficient amount of urine to complete the test;

(ii) The consequences of the appropriate federal agency regulation for refusing to take the required drug test;

(iii) That, after completing the evaluation, the referral physician must

agree to provide a written statement to the MRO with a recommendation for one of the determinations described in Section 13.6(b)(3) and the basis for the recommendation. The statement must not include detailed information on the donor's medical condition beyond what is necessary to explain the referral physician's conclusion.

(3) If a physician other than the MRO performed the evaluation, the MRO must consider and assess the referral physician's recommendations in making the determination. The MRO must make one of the following determinations and report it to the federal agency in writing:

(i) A medical condition as defined in Section 13.6(b)(1) has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine, but is not a permanent or long-term disability. The MRO must report a test cancelled result to the federal agency. If a negative result is required (i.e., for a pre-employment, return-to-duty, or follow-up test), the MRO directs the agency to immediately collect another urine specimen from the donor (i.e., unobserved collection) or recommends collection of an oral fluid specimen, depending on the medical condition.

(ii) A permanent or long-term medical condition as defined in Section 13.6(b)(1) has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine and is highly likely to prevent the donor from providing a sufficient amount of urine for a very long or indefinite period of time. The MRO actions in this context will be dictated by the reason for testing. For a pre-employment, return-to-duty, or a follow-up test, the MRO consults with the federal agency and recommends that the agency authorize collection of an oral fluid specimen. If the agency does not authorize the oral fluid collection, the MRO follows the requirements of Section 13.7. If the agency authorizes the oral fluid collection, or if the reason for testing is random, post-accident, or reasonable suspicion/cause, the MRO reports the test as cancelled and directs the agency to collect an oral fluid specimen from the donor.

(iii) There is no adequate basis to conclude that a medical condition has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine. The MRO must report a refusal to test to the federal agency.

(4) When a federal agency receives a report from the MRO indicating that a random, post-accident, or reasonable suspicion/cause test is cancelled because of an acute or temporary

medical condition as provided in Section 13.6(b)(3)(i), the agency takes no further action with respect to the donor. When the MRO reports that a random, post-accident, or reasonable suspicion/cause test is canceled because of a permanent or long-term medical condition as provided in Section 13.6(b)(3)(ii), the agency takes no further action with respect to the donor other than authorizing collection of an alternate specimen type (i.e., authorized by the Mandatory Guidelines for Federal Workplace Drug Testing Programs) for any subsequent collections, in accordance with the federal agency plan. The donor remains in the random testing pool.

Section 13.7 What happens when an individual is unable to provide a sufficient amount of urine for a federal agency applicant/pre-employment test, a follow-up test, or a return-to-duty test because of a permanent or long-term medical condition?

(a) This section concerns a situation in which the donor has a medical condition that precludes the donor from providing a sufficient specimen for a federal agency applicant/pre-employment test, a follow-up test, or a return-to-duty test and the condition involves a permanent or long-term disability and the federal agency does not authorize collection of an alternate specimen. The MRO must take the following action:

(1) Determine if there is clinical evidence that the individual is an illicit drug user. The MRO must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the donor's physician and/or the physician who conducted the evaluation under Section 13.6.

(2) If the MRO does not personally conduct the medical evaluation, the MRO must ensure that the evaluation is conducted by a licensed physician who is acceptable to the MRO.

(b) If the medical evaluation reveals no clinical evidence of illicit drug use, the MRO must report the result to the federal agency as a negative test with written notations regarding results of both the evaluation conducted under Section 13.6 and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist. The MRO recommends that the agency authorize collection of an alternate

specimen type (e.g., oral fluid) for any subsequent collections.

(c) If the medical evaluation reveals clinical evidence of drug use, the MRO must report the result to the federal agency as a cancelled test with written notations regarding results of both the evaluation conducted under Section 13.6 and any further medical examination. This report must state that a permanent or long-term medical condition [as defined in Section 13.6(b)(1)] exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (e.g., the federal agency is not authorized to allow the donor to begin or resume performing official functions, because a negative test is needed for that purpose).

Section 13.8 *How does an MRO report a primary (A) specimen test result to an agency?*

(a) The MRO must report all verified results to an agency using the completed MRO copy of the federal CCF or a separate report using a letter/memorandum format. The MRO may use various electronic means for reporting (e.g., fax, computer). Transmissions of the reports must ensure confidentiality. The MRO and external service providers must ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

(b) A verified result may not be reported to the agency until the MRO has completed the review process.

(c) The MRO must send a copy of either the completed MRO copy of the federal CCF or the separate letter/memorandum report for all positive, adulterated, and substituted results.

(d) The MRO must not disclose numerical values of drug test results to the agency.

(e) The MRO must report drug test results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

Section 13.9 *Who may request a test of a split (B) specimen?*

(a) For a positive, adulterated, or substituted result reported for a primary (A) specimen, a donor may request through the MRO that the split (B) specimen be tested by a second laboratory certified by HHS for that specimen type to verify the result reported by the first HHS-certified laboratory.

(b) The donor has 72 hours (from the time the MRO notified the donor that the donor's specimen was reported positive, adulterated, or substituted to request a test of the split (B) specimen. The MRO must inform the donor that the donor has the opportunity to request a test of the split (B) specimen when the MRO informs the donor that a positive, adulterated, or substituted result is being reported to the federal agency on the primary (A) specimen.

Section 13.10 *What types of relationships are prohibited between an MRO and an HHS-certified laboratory or an HHS-certified IITF?*

An MRO must not be an employee, agent of, or have any financial interest in an HHS-certified laboratory or an HHS-certified IITF for which the MRO is reviewing drug test results.

This means an MRO must not derive any financial benefit by having an agency use a specific HHS-certified laboratory or HHS-certified IITF, or have any agreement with the HHS-certified laboratory or the HHS-certified IITF that may be construed as a potential conflict of interest.

Section 13.11 *What reports must an MRO provide to the Secretary for urine testing?*

(a) An MRO must send to the Secretary or designated HHS representative a semiannual report of federal agency specimens that were reported as positive for a drug or drug metabolite by a laboratory and verified as negative by the MRO. The report must not include any personally identifiable information for the donor and must be submitted by mail, fax, or other secure electronic transmission method within 14 working days after the end of the semiannual period (i.e., in January and July). The semiannual report must contain the following information:

- (1) Reporting period (inclusive dates);
- (2) MRO name, company name, and address;
- (3) Federal agency name; and
- (4) For each laboratory-reported positive drug test result that was verified as negative by the MRO:
 - (i) Specimen identification number;
 - (ii) Laboratory name and address;
 - (iii) Positive drug(s) or drug metabolite(s) verified as negative;
 - (iv) MRO reason for verifying the positive drug(s) or drug metabolite(s) as negative (e.g., a donor prescription [the MRO must specify the prescribed drug]);
 - (v) All results reported to the federal agency by the MRO for the specimen; and
 - (vi) Date of the MRO report to the federal agency.

(b) An MRO must provide copies of the drug test reports that the MRO has sent to a federal agency when requested to do so by the Secretary.

(c) If an MRO did not verify any positive laboratory results as negative during the reporting period, the MRO should file a report that states that the MRO has no reportable results during the applicable reporting period.

Section 13.12 *What are a federal agency's responsibilities for designating an MRO?*

(a) Before allowing an individual to serve as an MRO for the agency, a federal agency must verify and document the following:

(1) that the individual satisfies all requirements in Section 13.1, including certification by an MRO certification organization that has been approved by the Secretary, as described in Section 13.2; and

(2) that the individual is not an employee, agent of, or have any financial interest in an HHS-certified laboratory or an HHS-certified IITF that tests the agency's specimens, as described in Section 13.10.

(b) The federal agency must verify and document that each MRO reviewing and reporting results for the agency:

(1) completes training on any revisions to these Guidelines, including any changes to the drug and biomarker testing panels, prior to their effective date;

(2) at least every five years, maintains their certification by completing requalification training and passing a requalification examination; and

(3) provides biannual reports to the Secretary or designated HHS representative as required in Section 13.11;

(c) The federal agency must ensure that each MRO reports drug test results to the agency in accordance with Sections 13.8 and 14.7.

(1) Before allowing an MRO to report results electronically, the agency must obtain documentation from the MRO to confirm that the MRO and any external service providers ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

Subpart N—Split Specimen Tests

Section 14.1 *When may a split (B) urine specimen be tested?*

(a) The donor may request, verbally or in writing, through the MRO that the split (B) urine specimen be tested at a different (i.e., second) HHS-certified urine laboratory when the primary (A)

specimen was determined by the MRO to be positive, adulterated, or substituted.

(b) A donor has 72 hours to initiate the request after being informed of the result by the MRO. The MRO must document in the MRO's records the verbal request from the donor to have the split (B) specimen tested.

(c) If a split (B) urine specimen cannot be tested by a second HHS-certified urine laboratory, the MRO reports a cancelled test to the Federal agency and the reason for the cancellation. The MRO takes action based on the reason for cancellation as follows.

(1) *No split (B) specimen available (e.g., insufficient specimen, lost in transit, split not available)*: The MRO directs the Federal agency to recollect another urine specimen from the donor.

(2) *No second HHS-certified laboratory to test the split (B) specimen for the adulterant reported in the primary (A) specimen*: The MRO directs the federal agency to ensure the immediate recollection of another urine specimen from the donor under direct observation, with no notice given to the donor of this collection requirement until immediately before the collection.

(3) *No second HHS-certified laboratory to test a split (B) specimen reported as substituted based on a biomarker (i.e., using the same or a different HHS-authorized biomarker)*: The MRO directs the federal agency to ensure the immediate recollection of another urine specimen from the donor under direct observation, with no notice given to the donor of this collection requirement until immediately before the collection.

(d) If a donor chooses not to have the split (B) specimen tested by a second HHS-certified urine laboratory, a federal agency may have a split (B) specimen retested as part of a legal or administrative proceeding to defend an original positive, adulterated, or substituted result.

Section 14.2 *How does an HHS-certified laboratory test a split (B) specimen when the primary (A) specimen was reported positive?*

(a) The testing of a split (B) specimen for a drug or metabolite is not subject to the testing cutoffs established in the drug testing panel.

(b) The HHS-certified laboratory is only required to confirm the presence of the drug or metabolite that was reported positive in the primary (A) specimen.

(c) For a split (B) urine specimen, if the second HHS-certified laboratory fails to reconfirm the presence of the drug or drug metabolite that was reported by the first HHS-certified

laboratory, the second laboratory must conduct specimen validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug or drug metabolite. The second laboratory should conduct the same specimen validity tests as it would conduct on a primary (A) urine specimen and reports those results to the MRO.

Section 14.3 *How does an HHS-certified laboratory test a split (B) urine specimen when the primary (A) specimen was reported adulterated?*

(a) The second HHS-certified urine laboratory must use one of the following criteria to reconfirm an adulterated result when testing a split (B) urine specimen:

(1) pH must be measured using the laboratory's confirmatory pH test with the appropriate cutoff (i.e., either less than 4 or equal to or greater than 11);

(2) Nitrite must be measured using the laboratory's confirmatory nitrite test with a cutoff of equal to or greater than 500 mcg/mL;

(3) Surfactant must be measured using the laboratory's confirmatory surfactant test with a cutoff of equal to or greater than 100 mcg/mL dodecylbenzene sulfonate-equivalent cutoff; or

(4) For adulterants without a specified cutoff (e.g., glutaraldehyde, chromium (VI), pyridine, halogens (such as, chlorine from bleach, iodine), peroxidase, peroxide, other oxidizing agents), the laboratory must use its confirmatory specimen validity test at an established LOQ to reconfirm the presence of the adulterant.

(b) The second HHS-certified laboratory may only conduct the confirmatory specimen validity test(s) needed to reconfirm the adulterated result reported by the first HHS-certified laboratory.

Section 14.4 *How does an HHS-certified laboratory test a split (B) urine specimen when the primary (A) specimen was reported substituted?*

An HHS-certified urine laboratory must use the following criteria to reconfirm a substituted result when testing a split (B) urine specimen:

(a) *For substitution based on creatinine and specific gravity testing*: The creatinine must be measured using the laboratory's confirmatory creatinine test with a cutoff of less than 2 mg/dL, and the specific gravity must be measured using the laboratory's confirmatory specific gravity test with the specified cutoffs of less than or equal to 1.0010 or equal to or greater than 1.0200.

(b) *For substitution based on biomarker testing*: The laboratory must test the split (B) specimen using its confirmatory test for the biomarker. Note: The laboratory may test for any HHS-authorized biomarker for the split (B) specimen. It is not necessary to test for the same biomarker to reconfirm the primary (A) specimen's substituted result.

Section 14.5 *Who receives the split (B) specimen result?*

The second HHS-certified laboratory must report the result to the MRO using the HHS-specified nomenclature published with the drug and biomarker testing panels.

Section 14.6 *What action(s) does an MRO take after receiving the split (B) urine specimen result from the second HHS-certified urine laboratory?*

The MRO takes the following actions when the second HHS-certified laboratory reports the result for the split (B) urine specimen as:

(a) *Reconfirmed the positive drug(s), adulteration, and/or substitution*. The MRO reports reconfirmed to the agency.

(b) *Failed to reconfirm a single or all drug positive results and the specimen was adulterated*. If the donor provides a legitimate medical explanation for the adulteration result, the MRO reports a failed to reconfirm result (specifying the drug[s]) and cancels both tests. If there is no legitimate medical explanation, the MRO reports a failed to reconfirm result (specifying the drug[s]) and a refusal to test to the agency and indicates the adulterant that is present in the specimen. The MRO gives the donor 72 hours to request that Laboratory A retest the primary (A) specimen for the adulterant. If Laboratory A does not perform the test, the MRO directs testing at another HHS-certified urine laboratory.

(1) If the laboratory reconfirms the adulterant in the primary (A) specimen, the MRO reports a refusal to test and indicates the adulterant present.

(2) If the laboratory fails to reconfirm the adulterant in the primary (A) specimen, the MRO cancels both tests and directs the agency to immediately collect another urine specimen using a direct observed collection procedure.

(c) *Failed to reconfirm a single or all drug positive results and the specimen was substituted*. If the donor provides a legitimate medical explanation for the substituted result, the MRO reports a failed to reconfirm result (specifying the drug[s]) and cancels both tests. If there is no legitimate medical explanation, the MRO reports a failed to reconfirm result (specifying the drug[s]) and a

refusal to test (substituted) to the agency. The MRO gives the donor 72 hours to request additional review or testing as follows:

(1) *For substitution based on creatinine and specific gravity:* request that Laboratory A review the creatinine and specific gravity results for the primary (A) specimen.

(2) *For substitution based on biomarker testing:* request that a second laboratory (i.e., Laboratory A or a different HHS-certified laboratory) test the primary (A) specimen using its confirmatory biomarker test. Note: The second laboratory may test the primary (A) specimen using a different HHS-authorized biomarker test than used for the split (B) specimen.

(3) For both cases above:

(i) If the primary (A) specimen's test results confirm that the specimen was substituted, the MRO reports a refusal to test (substituted) to the agency.

(ii) If the primary (A) specimen's results fail to confirm that the specimen was substituted, the MRO cancels both tests and directs the agency to immediately collect another specimen using a direct observed collection procedure.

(d) *Failed to reconfirm a single or all drug positive results and the specimen was not adulterated or substituted.* The MRO reports to the agency a failed to reconfirm result (specifying the drug[s]) and cancels both tests.

(e) *Failed to reconfirm a single or all drug positive results and the specimen had an invalid result.* The MRO reports to the agency a failed to reconfirm result (specifying the drug[s] and the reason for the invalid result), cancels both tests, and directs the agency to immediately collect another specimen using a direct observed collection procedure.

(f) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen was adulterated.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and found that the specimen was adulterated.

(g) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen was substituted.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or

more drugs and found that the specimen was substituted.

(h) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen was not adulterated or substituted.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs.

(i) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and the specimen had an invalid result.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and reported an invalid result.

(j) *Failed to reconfirm substitution and/or adulteration.* The MRO reports to the agency a failed to reconfirm result (not substituted and/or not adulterated: specifying the adulterant/pH) and cancels both tests.

(k) *Failed to reconfirm substitution or adulteration and the specimen had an invalid result.* The MRO reports to the agency a failed to reconfirm result (not substituted or not adulterated: specifying the adulterant/pH, and the reason for the invalid result), cancels both tests, and directs the agency to immediately collect another specimen using a direct observed collection procedure.

(l) *Reconfirmed substitution or adulteration and failed to reconfirm a single or all drug positive results.* The MRO reports to the agency a reconfirmed result (substituted or adulterated: specifying the adulterant/pH) and a failed to reconfirm result (specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed result (substituted or adulterated) although Laboratory B failed to reconfirm the drug result(s).

(m) *Failed to reconfirm a single or all drug positive results and failed to reconfirm substitution or adulteration.* The MRO reports to the agency a failed to reconfirm result (specifying the drug[s] and not substituted or not adulterated: specifying the adulterant/pH) and cancels both tests.

(n) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and reconfirmed adulteration.* The MRO reports to the agency a reconfirmed result (specifying the drug[s] and adulterated: specifying the adulterant/pH) and a failed to reconfirm result

(specifying the drug[s]). The MRO tells the agency that it may take action based on the reconfirmed drug(s) and the adulterated result although Laboratory B failed to reconfirm one or more drugs.

(o) *Reconfirmed one or more drugs, failed to reconfirm one or more drugs, and failed to reconfirm adulteration.* The MRO reports to the agency a reconfirmed result (specifying the drug[s]) and a failed to reconfirm result (specifying the drug[s] and not adulterated: specifying the adulterant/pH). The MRO tells the agency that it may take action based on the reconfirmed drug(s) although Laboratory B failed to reconfirm one or more drugs and failed to reconfirm the adulterated result.

(p) *Reconfirmed substitution and failed to reconfirm adulteration.* The MRO reports to the agency a reconfirmed result (substituted) and a failed to reconfirm result (not adulterated: specifying the adulterant/pH). The MRO tells the agency that it may take action based on the substituted result although Laboratory B failed to reconfirm the adulterated result.

(q) *Reconfirmed adulteration and failed to reconfirm substitution.* The MRO reports to the agency a reconfirmed result (adulterated: specifying the adulterant/pH) and a failed to reconfirm result (not substituted). The MRO tells the agency that it may take action based on the adulterated result although Laboratory B failed to reconfirm the substituted result.

Section 14.7 How does an MRO report a split (B) specimen test result to an agency?

(a) The MRO must report all verified results to an agency using the completed MRO copy of the Federal CCF or a separate report using a letter/memorandum format. The MRO may use various electronic means for reporting (e.g., fax, computer). Transmissions of the reports must ensure confidentiality. The MRO and external service providers must ensure the confidentiality, integrity, and availability of the data and limit access to any data transmission, storage, and retrieval system.

(b) A verified result may not be reported to the agency until the MRO has completed the review process.

(c) The MRO must send a copy of either the completed MRO copy of the Federal CCF or the separate letter/memorandum report for all split specimen results.

(d) The MRO must not disclose the numerical values of the drug test results to the agency.

(e) The MRO must report drug test results using the HHS-specified nomenclature published with the drug and biomarker testing panels.

Section 14.8 *How long must an HHS-certified laboratory retain a split (B) specimen?*

A split (B) specimen is retained for the same period of time that a primary (A) specimen is retained and under the same storage conditions, in accordance with Section 11.20. This applies even for those cases when the split (B) specimen is tested by a second HHS-certified laboratory and the second HHS-certified laboratory does not confirm the original result reported by the first HHS-certified laboratory for the primary (A) specimen.

Subpart O—Criteria for Rejecting a Specimen for Testing

Section 15.1 *What discrepancies require an HHS-certified laboratory or an HHS-certified IITF to report a urine specimen as rejected for testing?*

The following discrepancies are considered to be fatal flaws. The HHS-certified laboratory or IITF must stop the testing process, reject the specimen for testing, and indicate the reason for rejecting the specimen on the Federal CCF when:

(a) The specimen ID number on the primary (A) or split (B) specimen label/seal does not match the ID number on the federal CCF, or the ID number is missing either on the federal CCF or on either specimen label/seal;

(b) The primary (A) specimen label/seal is missing, misapplied, broken, or shows evidence of tampering and the split (B) specimen cannot be re-designated as the primary (A) specimen;

(c) The collector's printed name and signature are omitted on the federal CCF;

(d) There is an insufficient amount of specimen for analysis in the primary (A) specimen and the split (B) specimen cannot be re-designated as the primary (A) specimen;

(e) The accessioner failed to document the primary (A) specimen seal condition on the federal CCF at the time of accessioning, and the split (B) specimen cannot be re-designated as the primary (A) specimen;

(f) The specimen was received at the HHS-certified laboratory or IITF without a CCF;

(g) The CCF was received at the HHS-certified laboratory or IITF without a specimen;

(h) The collector performed two separate collections using one CCF; or

(i) The HHS-certified laboratory or IITF identifies a flaw (other than those specified above) that prevents testing or affects the forensic defensibility of the drug test and cannot be corrected.

Section 15.2 *What discrepancies require an HHS-certified laboratory or an HHS-certified IITF to report a specimen as rejected for testing unless the discrepancy is corrected?*

The following discrepancies are considered to be correctable:

(a) If a collector failed to sign the federal CCF, the HHS-certified laboratory or IITF must hold the specimen and attempt to obtain a memorandum for record to recover the collector's signature. If, after holding the specimen for at least 5 business days, the HHS-certified laboratory or IITF cannot recover the collector's signature, the laboratory or IITF must report a rejected for testing result and indicate the reason for the rejected for testing result on the federal CCF.

(b) If a specimen is submitted using a non-federal form or an expired federal CCF, the HHS-certified laboratory or IITF must test the specimen and also attempt to obtain a memorandum for record explaining why a non-federal form or an expired federal CCF was used and ensure that the form used contains all the required information. If, after holding the report for at least 5 business days, the HHS-certified laboratory or IITF cannot obtain a memorandum for record from the collector, the laboratory or IITF must report a rejected for testing result and indicate the reason for the rejected for testing result on the report to the MRO.

Section 15.3 *What discrepancies are not sufficient to require an HHS-certified laboratory or an HHS-certified IITF to reject a urine specimen for testing or an MRO to cancel a test?*

(a) The following omissions and discrepancies on the federal CCF that are received by the HHS-certified laboratory or IITF should not cause an HHS-certified laboratory or IITF to reject a urine specimen or cause an MRO to cancel a test:

(1) An incorrect laboratory name and address appearing at the top of the form;

(2) Incomplete/incorrect/unreadable employer name or address;

(3) MRO name is missing;

(4) Incomplete/incorrect MRO address;

(5) A transposition of numbers in the donor's Social Security Number or employee identification number;

(6) A telephone number is missing/incorrect;

(7) A fax number is missing/incorrect;

(8) A "reason for test" box is not marked;

(9) A "drug tests to be performed" box is not marked;

(10) A "collection" box is not marked;

(11) The "observed" box is not

marked (if applicable);

(12) The collection site address is missing;

(13) The collector's printed name is missing but the collector's signature is properly recorded;

(14) The time of collection is not indicated;

(15) The date of collection is not indicated;

(16) Incorrect name of delivery service;

(17) The collector has changed or corrected information by crossing out the original information on either the federal CCF or specimen label/seal without dating and initialing the change; or

(18) The donor's name inadvertently appears on the HHS-certified laboratory or IITF copy of the federal CCF or on the tamper-evident labels used to seal the specimens.

(19) The collector failed to check the specimen temperature box and the "Remarks" line did not have a comment regarding the temperature being out of range. If, after at least 5 business days, the collector cannot provide a memorandum for record to attest to the fact that the collector did measure the specimen temperature, the HHS-certified laboratory or IITF may report the test result for the specimen but indicates that the collector could not provide a memorandum to recover the omission.

(b) The following omissions and discrepancies on the federal CCF that are made at the HHS-certified laboratory or IITF should not cause an MRO to cancel a test:

(1) The testing laboratory or IITF fails to indicate the correct name and address in the results section when a different laboratory or IITF name and address is printed at the top of the federal CCF;

(2) The accessioner fails to print their name;

(3) The certifying scientist or certifying technician fails to print their name;

(4) The certifying scientist or certifying technician accidentally initials the federal CCF rather than signing for a specimen reported as rejected for testing;

(c) The above omissions and discrepancies should occur no more than once a month. The expectation is that each trained collector and HHS-certified laboratory or IITF will make every effort to ensure that the federal

CCF is properly completed and that all the information is correct. When an error occurs more than once a month, the MRO must direct the collector, HHS-certified laboratory, or HHS-certified IITF (whichever is responsible for the error) to immediately take corrective action to prevent the recurrence of the error.

Section 15.4 What discrepancies may require an MRO to cancel a test?

(a) An MRO must attempt to correct the following errors:

(1) The donor's signature is missing on the MRO copy of the federal CCF and the collector failed to provide a comment that the donor refused to sign the form;

(2) The certifying scientist failed to sign the federal CCF for a specimen being reported drug positive, adulterated, invalid, or substituted; or

(3) The electronic report provided by the HHS-certified laboratory or HHS-certified IITF does not contain all the data elements required for the HHS standard laboratory or IITF electronic report for a specimen being reported drug positive, adulterated, invalid result, or substituted.

(b) If the error in Section 15.4(a)(1) occurs, the MRO must contact the collector to obtain a statement to verify that the donor refused to sign the MRO copy. If, after at least 5 business days, the collector cannot provide such a statement, the MRO must cancel the test.

(c) If the error in Section 15.4(a)(2) occurs, the MRO must obtain a statement from the certifying scientist that they forgot to sign the federal CCF, but did, in fact, properly conduct the certification review. If, after at least 5 business days, the MRO cannot get a statement from the certifying scientist, the MRO must cancel the test.

(d) If the error in Section 15.4(a)(3) occurs, the MRO must contact the HHS-certified laboratory or HHS-certified IITF. If, after at least 5 business days, the laboratory or IITF does not retransmit a corrected electronic report, the MRO must cancel the test.

Subpart P—Laboratory or IITF Suspension/Revocation Procedures

Section 16.1 When may the HHS certification of a laboratory or IITF be suspended?

These procedures apply when:

(a) The Secretary has notified an HHS-certified laboratory or IITF in writing that its certification to perform drug testing under these Guidelines has been suspended or that the Secretary proposes to revoke such certification.

(b) The HHS-certified laboratory or IITF has, within 30 days of the date of such notification or within 3 days of the date of such notification when seeking an expedited review of a suspension, requested in writing an opportunity for an informal review of the suspension or proposed revocation.

Section 16.2 What definitions are used for this subpart?

Appellant. Means the HHS-certified laboratory or IITF which has been notified of its suspension or proposed revocation of its certification to perform testing and has requested an informal review thereof.

Respondent. Means the Director of the Division of Workplace Programs, Substance Abuse and Mental Health Services Administration, designated to act on behalf of HHS in an informal review of a suspension or proposed revocation of certification under this subpart.

Reviewing Official. Means the person designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more of the official's employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

Section 16.3 Are there any limitations on issues subject to review?

The scope of review shall be limited to the facts relevant to any suspension or proposed revocation, the necessary interpretations of those facts, the relevant Mandatory Guidelines for Federal Workplace Drug Testing Programs, and other relevant law. The legal validity of these Guidelines shall not be subject to review under these procedures.

Section 16.4 Who represents the parties?

The appellant's request for review shall specify the name, address, and telephone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and telephone number of the respondent's representative.

Section 16.5 When must a request for informal review be submitted?

(a) Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A

copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension or proposed revocation, a brief statement of why the decision to suspend or propose revocation is wrong, and the appellant's request for an oral presentation, if desired.

(b) Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

Section 16.6 What is an abeyance agreement?

Upon mutual agreement of the parties to hold these procedures in abeyance, the reviewing official will stay these procedures for a reasonable time while the laboratory or IITF attempts to regain compliance with the Guidelines or the parties otherwise attempt to settle the dispute. As part of an abeyance agreement, the parties can agree to extend the time period for requesting review of the suspension or proposed revocation. If abeyance begins after a request for review has been filed, the appellant shall notify the reviewing official at the end of the abeyance period, advising whether the dispute has been resolved. If the dispute has been resolved, the request for review will be dismissed. If the dispute has not been resolved, the review procedures will begin at the point at which they were interrupted by the abeyance agreement with such modifications to the procedures as the reviewing official deems appropriate.

Section 16.7 What procedures are used to prepare the review file and written argument?

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's Documents and Brief.* Within 15 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not to exceed 20 double-spaced pages, explaining why

respondent's decision to suspend or propose revocation of appellant's certification is wrong (appellant's brief).

(b) *Respondent's Documents and Brief.* Within 15 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification to perform drug testing, which is tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension or proposed revocation (respondent's brief).

(c) *Reply Briefs.* Within 5 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-spaced pages.

(d) *Cooperative Efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive Documentation.* The reviewing official may take any appropriate step to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

Section 16.8 When is there an opportunity for oral presentation?

(a) *Electing Oral Presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the decision-making process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own initiative or at the request of the respondent.

(b) *Presiding Official.* The reviewing official or designee will be the presiding official responsible for conducting the oral presentation.

(c) *Preliminary Conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: simplifying and clarifying issues, stipulations and admissions, limitations on evidence and witnesses that will be presented at the hearing,

time allotted for each witness and the hearing altogether, scheduling the hearing, and any other matter that will assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at their discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and Place of the Oral Presentation.* The presiding official will attempt to schedule the oral presentation within 30 days of the date the appellant's request for review is received or within 10 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the Oral Presentation.*

(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more of the official's employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of Proof/Standard of Proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to suspend or propose revocation is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is wrong.

(3) *Admission of Evidence.* The Federal Rules of Evidence do not apply and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for

example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for insufficient evidence, or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party opposing the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505 or 1001.

(g) *Post-hearing Procedures.* At their discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

Section 16.9 Are there expedited procedures for review of immediate suspension?

(a) *Applicability.* When the Secretary notifies an HHS-certified laboratory or IITF in writing that its certification to perform drug testing has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 3 days of the date the HHS-certified laboratory or IITF received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision to suspend and propose revocation is wrong, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing Official's Response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review File and Briefs.* Within 7 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following:

(1) A review file containing essential documents relevant to the review,

which is tabbed, indexed, and organized chronologically; and

(2) A written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral Presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official, the presiding official will attempt to schedule the oral presentation within 7–10 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a prehearing conference in accordance with Section 16.8(c) and will conduct the oral presentation in accordance with the procedures of Section 16.8(e), (f), and (g).

(e) *Written Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7–10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in Section 16.14 will apply.

(f) *Transmission of Written Communications.* Because of the importance of timeliness for these expedited procedures, all written communications between the parties and between either party and the reviewing official shall be by fax, secured electronic transmissions, or overnight mail.

Section 16.10 Are any types of communications prohibited?

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

Section 16.11 How are communications transmitted by the reviewing official?

(a) Because of the importance of a timely review, the reviewing official

should normally transmit written communications to either party by fax, secured electronic transmissions, or overnight mail in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) In counting days, include Saturdays, Sundays, and Federal holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

Section 16.12 What are the authority and responsibilities of the reviewing official?

In addition to any other authority specified in these procedures, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

Section 16.13 What administrative records are maintained?

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

Section 16.14 What are the requirements for a written decision?

(a) *Issuance of Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation. The decision will set forth the reasons for the decision and describe the basis therefore in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of Decision.* The reviewing official will attempt to issue their decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public Notice.* If the suspension and proposed revocation are upheld, the revocation will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. If the suspension and proposed revocation are denied, the revocation will not take effect and the suspension will be lifted immediately. Public notice will be given by publication in the **Federal Register**.

Section 16.15 Is there a review of the final administrative action?

Before any legal action is filed in court challenging the suspension or proposed revocation, respondent shall exhaust administrative remedies provided under this subpart, unless otherwise provided by federal law. The reviewing official's decision, under Section 16.9(e) or 16.14(a) constitutes final agency action and is ripe for judicial review as of the date of the decision.

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