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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 125 and 128

Clarification To Direct Final Rule on Eliminating Self-Certification for Service-Disabled Veteran-Owned Small Businesses

AGENCY: U.S. Small Business Administration.

ACTION: Clarification to direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) publishes this document to clarify a direct final rule published on June 6, 2024. SBA revised its regulations to implement a provision in the National Defense Authorization Act for Fiscal Year 2024 (NDAA 2024), which eliminates self-certification for service-disabled veteran-owned small businesses (SDVOSBs) that are awarded Federal Government contracts or subcontracts that count towards agency or subcontracting goals. SBA received seven comments but did not receive significant adverse comment.

DATES: SDVOSBs may continue to self-certify until the grace period ends on December 22, 2024.

FOR FURTHER INFORMATION CONTACT: Donna Fudge, U.S. Small Business Administration, Office of Government Contracting and Business Development, 409 Third Street SW, 8th Floor, Washington, DC 20416; (202) 205–6353; *Donna.Fudge@sba.gov.* This phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION: On June 6, 2024, SBA published a direct final rule, 89 FR 48266, to implement provisions of Section 864 of NDAA 2024 with an effective date of August 5, 2024. NDAA 2024 amends the SDVOSB requirements so that on October 1, 2024, each prime contract award and subcontract award counted for the purpose of meeting the goals for participation by SDVOSBs in procurement contracts for Federal agencies or Federal prime contractors shall be entered into with firms certified by VetCert under section 36 of the Small Business Act (15 U.S.C. 657f). Section 864 also created a grace period so that firms that file an application for certification with SBA by December 22, 2024, may continue to self-certify for such Federal Government contracts and subcontracts until SBA makes a final decision.

SBA received seven comments in response to this direct final rule. Several of these comments expressed confusion about the direct final rule's effective date because it precedes the date of certification required by NDAA 2024. It is not SBA's intent to require certification by August 5, 2024. The effective date of the direct final rule is simply the date that the Code of Federal Regulations is amended. NDAA 2024 provides a grace period so that SDVOSBs may continue to self-certify until December 22, 2024. These provisions are mandated by statute and SBA does not have the authority to alter them. SBA's intent was to give notice to participants of the upcoming requirement and their need to apply for certification by December 22, 2024.

Additionally, SBA received no significant adverse comments which would warrant withdrawing the rule. SBA views this as a non-controversial administrative action that is limited to implementing the provisions of NDAA 2024. These provisions are mandated by statute, and SBA does not have the authority to alter them in response to comment.

Larry Stubblefield,

Deputy Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2024–16961 Filed 7–31–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0650]

Special Local Regulation, Seattle Seafair Unlimited Hydroplane Race

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the Seattle Seafair Unlimited Hydroplane Race from 8 a.m. to 5 p.m. each day from August 2 through August 4, 2024, to provide for the safety of life on navigable waterways during this event. The regulation for this event identifies the regulated area on Lake Washington, Seattle, Washington. During the enforcement periods, vessels and persons in the regulated area must comply with the lawful directions from the Coast Guard designated Patrol Commander, the established Coast Guard patrol, and any federal, state, and local law enforcement agencies assisting the Patrol Commander.

DATES: The regulations in 33 CFR 100.1301 will be enforced from 8 a.m. until 5 p.m., each day, from August 2, 2024, through August 4, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander John Robertson, U.S. Coast Guard, Sector Puget Sound, Waterways Management Division; by telephone 206–217–6051, or email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.1301 for the Seattle Seafair Unlimited Hydroplane Race from 8 a.m. to 5 p.m., each day, on August 2, 2024 through August 4, 2024. This action is being taken to provide for the safety of life on navigable waterways during this 3-day event. The regulation for this event, § 100.1301(b), specifies the location of the regulated area for the Seattle Seafair Unlimited Hydroplane Race which encompasses portions of Lake Washington, Seattle, Washington. The regulated area is divided into two zones. The zones are separated by a line

perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race-course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Auxiliary Coast Guard vessels in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (Patrol Commander). The Patrol Commander is empowered to control the movement of vessels on the race-course and in the adjoining waters during the periods this regulation is in effect. The Patrol Commander may be assisted by other federal, state, and local law enforcement agencies.

Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

During the times in which the regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited while hydroplane boats are on the race-course. At other times in Zone I, any person entering the water from the shoreline shall remain west of the swim line, denoted by buoys, and any person entering the water from the log boom shall remain within ten (10) feet of the log boom.

During the times in which the regulation is in effect, any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

During the times this regulation is in effect, rafting to a log boom will be limited to groups of three (3) vessels.

During the times this regulation is in effect, up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom.

During the times this regulation is in effect, only vessels authorized by the Patrol Commander, other law enforcement agencies, or event sponsors shall be permitted to tow other watercraft of inflatable devices.

Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (7) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (7) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

A succession of sharp, short signals by whistle or horn from vessels controlling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with lawful orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The Coast Guard may be assisted by other federal, state, and local law enforcement agencies, as well as official Seafair event craft.

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

Dated: July 26, 2024.

Mark A. McDonnell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Puget Sound.

[FR Doc. 2024–16948 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0170]

RIN 1625–AA00

Safety Zone; West River Entrance, Shady Side, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters near the West River Entrance near Shady Side, Maryland within 200 yards of the sunken recreational vessel LOVEBUG and salvage operations located at −38° 51.660 N, 076° 29.600 W. The safety zone is needed to protect the public and vessels from potential hazards created by an obstruction to the West River. Additionally, the safety zone is needed to ensure a safe working environment for the first responders and dive teams from passing traffic. This rule will prohibit persons or vessels from entering this zone unless specifically authorized by the Captain of the Port (COTP) Sector Maryland-National Capital Region (NCR) or a designated representative.

DATES: This rule is effective without actual notice from August 1, 2024 to August 02, 2024. For purposes of enforcement, actual notice will be used from July 27, 2024 through August 1, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0170 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Kate Newkirk, Sector Maryland-NCR, Waterways Management Branch, U.S. Coast Guard; 410–365–8141, *MDNCRWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to respond to the potential safety hazards associated with emergency salvage operations. It is impracticable to publish an NPRM because we must establish this safety zone immediately on July 27, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to ensure the safety of vessels and persons on these navigable waters during the emergency vessel salvage operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The COTP Sector Maryland-NCR has

determined that potential hazards associated with this vessel salvage operation starting on July 27, 2024 will be a safety concern for anyone within a 200-yard radius of the vessel salvage operation in the West River Entrance. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel salvage operations are being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from July 27, 2024 through August 02, 2024. The safety zone will cover all navigable waters within 200 yards of the vessel salvage operation. This rule is necessary to ensure the safety of vessels and persons during the vessel salvage operation. This rule will prohibit persons or vessels from entering this zone unless specifically authorized by the COTP or a designated representative.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, and duration of the proposed rulemaking. This safety zone would take place on a relatively small area of the West River Entrance and waters associated with Shady Side, MD, lasting from July 27, 2024 through August 02, 2024. Additionally, the Coast Guard would issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the safety zone so that waterway users may plan accordingly for transits during this restriction, and the rule will allow vessels to seek permission from the COTP Maryland-NCR or a designated representative to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. 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).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. 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. 4321–4370f), 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 involves a 200 yard safety zone around salvage operations near the West River Entrance for less than 7 days. It is categorically excluded from further review under paragraph L60(c) of appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1; 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0170 to read as follows:

§ 165.T05–0170 Safety Zone; West River Entrance, Shady Side, MD.

(a) *Location.* The following area is a safety zone: all navigable waters within 200 yards of the location of the vessel LOVEBUG and associated salvage operation located at position −38° 51.660 N, 076° 29.600 W.

(b) *Enforcement period.* This section is effective from July 27, 2024 through August 02, 2024.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting through, or exiting from this area is prohibited unless authorized by the COTP Maryland-NCR or a designated representative.

(2) Vessels desiring to transit the regulated area may do so only with prior approval of the COTP Maryland-NCR or a designated representative and when so directed will be operated at a minimum safe navigation speed in a manner that will not endanger salvage operations in the zone or any other vessels.

(3) The COTP Maryland-NCR or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) Entry into this zone is prohibited unless authorized by the COTP Maryland-NCR or a designated representative.

(5) Persons or vessels seeking to enter or transit through the zone must request permission from the COTP Maryland-NCR or a designated representative. They may be contacted on VHF–FM channel 16 or by telephone at 410–576–2693.

(6) If permission is granted, all persons and vessels must comply with the instructions of the COTP Maryland-NCR or designated representative.

(d) *Informational broadcasts.* The COTP Maryland-NCR or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: July 27, 2024.

Patrick C. Burkett,

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

[FR Doc. 2024–17002 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[ED–2024–OPE–0073]

Transitioning Gang-Involved Youth to Higher Education Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final priority and definition.

SUMMARY: The Department of Education (Department) issues a priority and definition for use in the Transitioning Gang-Involved Youth to Higher Education Program. The Department may use the priority and definition for competitions in fiscal year (FY) 2024 and later years. This priority and definition will support projects for organizations that work directly with gang-involved youth to help such youth pursue higher education opportunities that will lead to postsecondary certification or credentials.

DATES: This priority and definition are effective September 3, 2024.

FOR FURTHER INFORMATION CONTACT: Jymece Seward, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C113, Washington, DC 20202–4260. Telephone: 202–453–6138. Email: *Jymece.Seward@ed.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:

Purpose of Program: The purpose of the Transitioning Gang-Involved Youth to Higher Education (TGIY) Program is to provide a funding opportunity for organizations that work directly with gang-involved youth to help such youth pursue higher education opportunities that will lead to postsecondary certification or credentials.

Assistance Listing Number: 84.116Y.

Program Authority: 20 U.S.C. 1138–1138d; Explanatory Statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47).

We published a notice of proposed priority and definition in the **Federal Register** on June 6, 2024 (89 FR 48356) (NPP). That document contained background information and the Department's reasons for proposing the particular priority and definition. There are no differences between the proposed priority and definition and the final priority and definition.

Public Comment: In response to our invitation in the NPP, 11 parties submitted comments on the priority and definition. Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize us to make under applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority and definition.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority and definition since publication of the NPP follows.

General Comments

Comments: Four commenters expressed support for the program. One noted that the 14–24 age range is a key period for positive intervention and that the criteria in the definition of ''gang-involved youth'' related to gang identity, permanence, organization, and elevated criminal activity align with established research on gang dynamics. One commenter supported the alignment of the criteria in the definition of ''gang-involved youth'' with the criteria used by the U.S. Department of Justice's Gang Center.

Discussion: We appreciate the support of the grant program and the priority and the definition.

Changes: None.

Comments: One commenter suggested that this program should be run by the Bureau of Prisons.

Discussion: Congress has authorized funding for this program with appropriated funds for the U.S. Department of Education since FY 2021.

Changes: None.

Priority

Comments: One commenter suggested broadening the program scope to include supporting, in addition to gang-involved youth, youth who are at high-risk of gang involvement.

Discussion: While we recognize the need for supports for the broader population, the priority is aligned with the congressional directive that the Department provide a funding opportunity for organizations that work directly with gang-involved youth to help such youth pursue higher education opportunities.

Changes: None.

Comments: One commenter suggested that organizations that provide services unrelated to gang-involved youth should be allowed to apply for projects.

Discussion: There is nothing in the priority that limits organizations that provide services unrelated to gang-involved youth from applying for funding, as long as the proposed project itself is for work directly related to gang-involved youth.

Changes: None.

Comments: One commenter suggested that we require applicants to provide in their application their annual success rate with respect to gang-involved youth pursuing higher education opportunities.

Discussion: Under this program, organizations can propose new projects that align with the purpose of the grant program such that they are likely to lead to the intended outcomes for participating youth. That said, through the selection criteria, which are scored for each applicant, the peer reviewers determine the quality of the proposed projects and the ability of the applicants to be able to implement them.

Changes: None.

Comments: One commenter noted that the Department should look favorably upon applications that incorporate evidence-based practices, such as trauma-informed care, mentoring, and job readiness training, alongside the educational components.

Discussion: Although the final priority does not include an evidence requirement, the Department plans to use selection criteria from 34 CFR 75.210 (General selection criteria) to evaluate the extent to which proposed projects incorporate evidence-based practices, including as part of the project design and the project evaluation.

Changes: None.

Comments: One commenter suggested that the Department give priority to applications from agencies that have a mission of providing licensed, high-quality counseling and follow-up support services to young people who are identified as ''at risk'' to the influences of gang membership, including youth who are currently or were formerly involved with a gang; staffing, or a plan for staffing, sufficient to ensure a manageable caseload, the leeway for consistently scheduled follow-ups on progress, and the capacity to provide other support services; and a strong information and referral base from which they can further empower clients to seek assistance from other programs and services that could support them in a more holistic manner to help them reach their educational goals.

Discussion: The Department intends to use selection criteria from 34 CFR 75.210 (General selection criteria) to evaluate the quality of the project services and the project personnel, among other things.

Changes: None.

Definition

Comments: Three commenters suggested changing the term ''gang-involved youth.'' One commenter suggested changing it to ''gang-impacted'' as a way to help reduce stigma, encourage help-seeking behavior, address root causes, and enhance research and policy development. One commenter recommended that we use ''youth who are gang involved,'' and another commenter suggested that given the age range of 14–24, the group be defined as ''gang-influenced youth and young adults.''

Discussion: We appreciate the commenters' feedback, but ''gang-involved youth'' is the term used in the appropriations language provided by Congress for this program since FY 2021.

Changes: None.

Comments: One commenter suggested that the age range for gang-involved youth be expanded to 12 to 24 years old.

Discussion: Given the focus of the grant program on preparing youth for postsecondary education opportunities, having the age range start at 14 better aligns with the goals of the program. Furthermore, this age range aligns with the age range in the definition of ''disconnected youth''—a population that may overlap with gang-involved youth—established by the Department for use in its discretionary grant programs. (Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs published in the **Federal Register** on December 10, 2021 (86 FR 70612)). Aligning these definitions will promote consistency in the administration of the Department's discretionary grant programs.

Changes: None.

Final Priority

The Secretary establishes the following priority for use in the TGIY Program.

Projects for Organizations to Work Directly with Gang-Involved Youth to Help Such Youth Pursue Higher Education Opportunities.

To meet this priority, an eligible applicant must demonstrate that the project will work directly with gang-involved youth to help such youth pursue higher education opportunities.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Definition

The Secretary establishes the following definition for use in the TGIY Program.

Gang-involved youth means an individual, between the ages 14 and 24, who is or was involved in a group that meets the following criteria: the group has three or more members who share an identity, typically linked to a name and often other symbols; members view themselves as a gang and are recognized by others as a gang; the group has some permanence and a degree of organization; and the group is involved in an elevated level of criminal activity.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection

criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this priority and definition, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); 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, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority and definition only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

The potential costs associated with the priority and definition are minimal, while the potential benefits are significant. The Department believes that this final regulatory action will not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that the final priority and definition will not have a significant economic impact on a substantial number of small entities.

The small entities that this final regulatory action will affect are institutions of higher education that meet the eligibility requirements described in section 241(1) of the Higher Education Act of 1965, as amended. The Secretary believes that the costs imposed on applicants by the final priority and definition will be limited to paperwork burden related to preparing an application and that the benefits will outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the final priority and definition will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for TGIY funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a TGIY grant. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that

application to seek funding from other sources to work directly with gang-involved youth to help them pursue higher education opportunities that will lead to postsecondary certification or credentials.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program.

Paperwork Reduction Act of 1995

This final priority and definition do not contain any information collection requirements.

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, compact disc, or other 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 Department documents 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 Department documents 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.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–16834 Filed 7–31–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 78

RIN 2900–AR16

Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, an interim final rule to implement a new authority requiring VA to implement a three-year community-based grant program to award grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families for the purpose of reducing veteran suicide.

DATES: This rule is effective September 3, 2024.

FOR FURTHER INFORMATION CONTACT: Sandra Foley, Director SSG Fox SPGP—Suicide Prevention Program, Office of Suicide Prevention, 11SP, 810 Vermont Avenue NW, Washington, DC 20420, (202) 502–0002. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: In an interim final rule published in the **Federal Register** (FR) on March 10, 2022, (87 FR 13806), VA established and implemented, in new part 78 of title 38, Code of Federal Regulations (CFR), the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP), required by section 201 of the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019, Public Law (Pub. L.) 116–171 (the Act). VA provided a 60-day comment period. On March 22, 2022, VA published a technical correction to address minor technical and inadvertent errors in the published interim final rule. 87 FR 16101. This technical correction did not extend the comment period, which ended on May 9, 2022. Ten comments were received.

Comments

All of the comments were generally supportive of the rule, and VA thanks the commenters for their support. VA received substantive feedback from three commenters, all of which were individuals, and their comments are discussed in more detail below.

Applications, Suicide Prevention Services, and Eligibility

One commenter provided substantive feedback regarding 38 CFR 78.15, which describes the grant application package. This commenter suggested the application criteria include that the programs and services are evidence-informed or evidence-based and referred to related definitions from a National Academies of Sciences, Engineering, and Medicine report from 2019. VA appreciates this comment, but makes no changes based on it for the reasons described below.

VA acknowledges the importance of evidence-informed and evidence-based programs, services, and strategies in reducing suicide risk, and notes that the majority of the services provided under this grant program, as set forth in §§ 78.50 through 79.85, are evidence-based or evidence-informed.

VA acknowledges that it requires applicants to present evidence of their capacity to provide services and programs and for them to stay informed of evidence-informed suicide prevention practices. For example, as part of the application, applicants are required to provide evidence relating to their programs and services. Current § 78.15(a)(1) requires documentation evidencing the experience of the applicant and any identified community partners in providing or coordinating the provision of suicide prevention services to eligible individuals and their families. Paragraph (a)(6) also requires, in pertinent part, evidence of measurable outcomes related to reductions in suicide risk and mood-related symptoms using validated instruments. We believe these provisions already address the concerns of the commenter.

Additionally, § 78.25(c)(2)(iii) states that VA will award points based on the applicant having a feasible plan for ensuring that the applicant's staff and any community providers are appropriately trained and stay informed of SSG Fox SPGP policy, evidence-informed suicide prevention practices, and the requirements of part 78. Similarly, § 78.30(d)(1) provides that VA will give preference to applicants that demonstrated the ability to provide or coordinate suicide prevention services, which can be easily demonstrated through the use of evidence-based or evidence-informed interventions. As set forth in current §§ 78.45 through 78.90, suicide prevention services include outreach, baseline mental health screenings, education, clinical services for emergency treatment, case management services, peer support services, assistance in obtaining VA and other public benefits, assistance with emergent needs, nontraditional and innovative approaches and treatment practices, and other services such as general suicide prevention assistance. These provisions further demonstrate that existing requirements will ensure that programs and services take a public health approach to suicide prevention, balancing linkage to clinical interventions with community-based strategies tailored to that community's unique needs.

Pursuant to § 78.90, VA may authorize ''other services'' which may not

necessarily be evidence-informed or evidence-based, but informed by a public health approach to suicide prevention that blends community-based prevention with evidence-based clinical strategies. Additionally, ''other services'' are considered because the field of mental health and suicide prevention, including the data and evidence supporting suicide prevention services, is continuously evolving. This approach provides VA with flexibility to approve those services that have promise in reducing veteran suicide but do not yet have data to directly support service expected outcomes. VA believes this is consistent with the intent of this program as a pilot and section 201 of the Act, as pilot programs are typically intended to provide an agency with a period of time to develop a systematic method for program evaluation, evaluate how such a program should operate, and develop metrics and outcomes, ultimately to inform which programs should be continued. Requiring that programs and services provided under this grant program all be evidence-informed or evidence-based could potentially limit the approaches and treatment practices that may be effective in reducing and preventing suicide risk, which would be contrary to the intent of section 201 of the Act and of this program as a pilot. As a result, VA makes no changes based on this comment.

Another commenter suggested that the types of services provided could be extended. This commenter endorsed an idea submitted in response to the request for information VA published in April 2021 related to this rulemaking to have a holding system at gun clubs for veterans while they seek mental health treatment. See 86 FR 17268 (April 1, 2021). This could be considered a nontraditional innovative practice or other service that grantees could provide pursuant to 38 CFR 78.85 or 78.90, respectively. Sections 78.85 and 78.90 are not intended to be exhaustive lists of services covered under those sections. Instead, VA has retained discretion to approve services or approaches proposed by applicants pursuant to §§ 78.85 and 78.90. An applicant is not prohibited from proposing such approaches or services in their application, upon which VA would consider these potential services based on the individual application. Thus, VA would not revise §§ 78.85 or 78.90 to include this as an approved suicide prevention service. VA makes no changes based on this comment.

This commenter also appeared to argue that suicide prevention services should be extended to include those that would address housing and child care as the commenter notes that lack of access to these services can affect an individual's mental health. Pursuant to § 78.80(e) and (h), grantees may assist eligible individuals in obtaining and coordinating child care and temporary income support services including housing assistance as part of any public benefit provided by Federal, State, local, or Tribal agencies, or any other grantee in the area. The grantee may also directly provide child care and housing assistance. Under § 78.80(g), grantees can also assist participants in obtaining and coordinating other public benefits or assisting with emergent needs, and grantees can provide directly to participants legal services to assist with issues, including obtaining or retaining permanent housing, that may contribute to the risk of suicide.

Relatedly, this commenter also seemed to argue that the services under this grant program should be available to those who do not struggle with suicidal ideation. In determining eligibility for services under this grant program, VA requires suicidal ideation and/or behaviors as part of the criteria of being at risk for suicide. Pursuant to § 78.10(b), VA requires exposure to, or the existence of certain factors, to any degree, that *increase* the risk for suicidal ideation and/or behaviors [emphasis added]. This is consistent with the intent of this grant program and section 201 of the Act, including section 201(q)(4), which defines eligible individuals for purposes of the program as persons ''at risk of suicide''. VA notes that those who are ineligible for services under this grant program because they are not at risk for suicide may be eligible for other benefits and services to address any challenges they may be encountering, including such VA benefits and services as VA health care and the Homeless Grant and Per Diem Program. Grantees can, and are encouraged to, refer individuals who have been screened but are determined not to be at risk of suicide to other resources and organizations in their community or to furnish support to them directly through resources other than those available under this program.

VA makes no changes based on this comment.

Reporting and Referrals

One commenter stated that the regulations on reporting and referrals were too strict and that they hoped they could be adjusted to account for veterans who may avoid this program because they either would not want VA to hold onto their records or are not comfortable with a program affiliated with VA. VA understands the commenter's concern, but many of the reporting requirements are consistent with the requirements of the Act (see section 201(e)(5) and (k) of the Act) as well as other VA grant programs, such as the Supportive Services for Veterans and Families (SSVF) program. Thus, VA is unable to change several of these reporting requirements without congressional action to remove such requirements. Additionally, these reporting requirements are important in ensuring that VA is a good fiscal steward of the taxpayer dollar in administering this grant program. VA further notes these reporting requirements are for the grantees and not veterans.

With regard to the regulations on referrals, VA assumes this commenter is mentioning the referral requirement in 38 CFR 78.50. Under section 201(m)(1) of the Act, grantees are required to refer certain eligible individuals to VA for care. Such individuals can refuse referral, consistent with section 201(m)(3). VA modeled the requirement of referral in 38 CFR 78.50 after the referral requirement in section 201(m) of the Act. Because this referral is required by statute, VA is unable to remove or adjust this requirement in 38 CFR 78.50 without legislative action removing this referral requirement from section 201(m) of the Act.

The commenter also stated that there may be individuals who choose to stay away from programs that have VA's name attached to them. However, pursuant to section 201(e)(1) of the Act, each grantee is required to notify recipients of the suicide prevention services that are being paid for, in whole or in part, by VA. VA makes no changes to the regulations based on this comment.

Changes to 38 CFR Part 78 Not Based on Comments

VA makes several changes not based on comments. These do not create any burdens or restrictions on grantees under this grant program and address issues VA has identified with implementation. Several of these changes remove requirements and limitations that would restrict grantees and their ability to effectively provide suicide prevention services under this grant program. These changes are a logical outgrowth from the interim final rule, and even if they are not, given their nature, advance notice and the opportunity to comment is unnecessary under the terms of 5 U.S.C. 553(b)(B).

Changes to 38 CFR 78.50 and 78.95

As part of the interim final rule published on March 10, 2022, VA established 38 CFR 78.50(a), which requires that grantees provide or coordinate the provision of a baseline mental health screening to all participants, including eligible individuals and their family, at the time those services begin. VA is revising 38 CFR 78.50(a) to only require the provision of a baseline mental health screening to eligible individuals instead of all participants (such as family). This revision would be consistent with section 201(m) of the Act, which only requires the provision of a baseline mental health screening to eligible individuals. See also, section 201(k)(1)(B)(vi) which requires a report on the number of eligible individuals whose mental health status, wellbeing, and suicide risk received a baseline measurement assessment under section 201. It is not appropriate to require grantees to conduct baseline mental health screenings to participants other than eligible individuals, including children under the age of 18 as well as other family of eligible individuals (that is, parents, spouses, siblings, step-family members, extended family members, and any other individuals who live with the eligible individuals) in their programs. Additionally, as explained in the amendment to Notice of Funding Opportunity (NOFO) published on June 3, 2022, this requirement could present significant logistical and legal difficulties regarding the provision or coordination of the provision of a baseline mental health screening to children. See 87 FR 33880 for additional information.

While VA did not receive any comments on the requirement to provide or coordinate the provision of a baseline mental health screening to all participants during the public comment period on the interim final rule, this revision to § 78.50(a) will lessen the burden on grantees, as they will only be required to conduct baseline mental health screenings for eligible individuals. However, VA acknowledges that if a grantee desires to conduct the baseline mental health screening of a participant other than an eligible individual, VA is not restricting their ability to do so, but that would be at the grantee's discretion and would not be supported through grant funds.

To be consistent with the changes VA is making to § 78.50(a), VA also amends § 78.50 by removing paragraph (c), which explains that if a participant other than an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening conducted under paragraph (a), the grantee must refer such participant to appropriate health care services in the area unless the grantee is capable of furnishing such care and that any ongoing clinical services provided to the participant by the grantee are at the expense of the grantee.

Because VA will not require grantees to provide a baseline mental health screening to all participants (as explained directly above), the requirement in paragraph (c) to refer participants to appropriate health care services in the area based on the baseline mental health screening would also not be needed. However, VA strongly encourages grantees that identify such participants as being at risk of suicide or other mental or behavioral health condition to refer these participants to appropriate health care services in the area or provide such care themselves if the grantee is capable and does so at their own expense. This would ensure that these participants receive any necessary health care services to address their condition(s). VA would not require referrals, but rather strongly encourage them in such instances. This would be reflected in grant program materials such as the NOFO and program guide.

For the same reasons as discussed above, VA makes similar and consistent changes to § 78.50(d), which states that except as provided for under § 78.60(a), funds provided under this grant program may not be used to provide clinical services to participants, and any ongoing clinical services provided to such individuals by the grantee are at the expense of the grantee. The grantee may not charge, bill, or otherwise hold liable participants for the receipt of such care or services. VA now revises § 78.50(d) to refer to eligible individuals instead of participants, and to redesignate paragraph (d) as paragraph (c), given the removal of paragraph (c) as described above.

To be consistent with these changes made in § 78.50, VA also revises § 78.95(b), which requires that prior to services ending, grantees must provide or coordinate the provision of a mental health screening using the screening tool described in § 78.50(a) to all participants they serve, when possible. VA revises § 78.95(b) to refer to eligible individuals instead of participants.

Changes to 38 CFR 78.130

Section 78.130 explains that faith-based organizations are eligible for suicide prevention services grants and describes the conditions for use of these grants as they relate to religious activities. Subsequent to the publication of the interim final rule establishing part 78, VA finalized regulations updating 38 CFR part 50. See 89 FR 15671 (March 4, 2024). Part 50 also explains that faith-based organizations are eligible to participate in VA's grant-making programs on the same basis as any other organizations, that VA will not discriminate against faith-based organizations in the selection of service providers, and that faith-based and other organizations may request accommodations from program requirements and may be afforded such accommodations in accordance with Federal law. Because all VA grant programs, including SSG Fox SPGP, are subject to part 50, VA revises 38 CFR 78.130 to refer to part 50 rather than restate the provisions of part 50. Thus, in the event that part 50 is further amended, VA would not need to amend part 78. VA does not regard notice and comment on this change as necessary because the public was already given notice and an opportunity to comment as part of the rulemaking to amend part 50.

Changes to 38 CFR 78.140

Section 78.140 describes financial management and administrative costs related to this grant program. Paragraph (d) limits the administrative costs to no more than 10 percent of the total amount of the suicide prevention services grant. While 2 CFR 200.414(c) requires that negotiated rates for indirect costs (also commonly referred to as administrative costs) between one Federal awarding agency and a grantee must be accepted by all Federal awarding agencies, Federal agencies are able to use different rates when authorized by statute or regulation. See 2 CFR 200.414(c)(1).

Pursuant to such exception, VA promulgated the 10 percent limit on administrative costs at 38 CFR 78.140(d). However, VA has found that capping the administrative costs at 10 percent results in certain unintended consequences. Through the application process, VA has found that numerous organizations receive funding from other Federal agencies for the provision or coordination of the provision of similar services that are provided under the instant grant program. Those organizations have various rates determined by a negotiated Federal indirect cost rate (IDCR) that may be higher or lower than 10 percent. For example, after reviewing whether current grantees received funding from other Federal agencies, VA identified that 31 of the 80 current grantees have

a negotiated Federal IDCR that is higher than 10 percent.

As a result, such organizations have internally operationalized such rates. VA's 10 percent limit may negatively impact those organizations who have an IDCR higher than 10 percent, particularly as such organizations may not have additional funds for administrative costs due to the operationalization of the higher rate they have established with other Federal agencies for the provision or coordination of similar services. VA is thus concerned that limiting administrative costs to 10 percent may disrupt organizations' provision or coordination of the provision of services authorized under the instant grant program and those similar services that may be provided or coordinated by the organization pursuant to funding awarded by another Federal agency.

Additionally, VA is concerned that this 10 percent cap may result in some organizations, who have an IDCR higher than 10 percent, deciding not to apply for a suicide prevention services grant. This could limit the number of organizations to which VA could provide funds under this instant grant program, including those organizations that have current and/or past experience providing and/or coordinating the services authorized under this grant program.

Removing this limit of 10 percent and applying the rate that an organization has negotiated with another Federal agency pursuant to 2 CFR 200.414(c) will ensure that VA aligns with other Federal agencies who provide funds to organizations for the similar type of services that are authorized under this instant grant program.

For these reasons, VA amends 38 CFR 78.140 by revising the first sentence of paragraph (d) to state that costs for administration by a grantee will be consistent with 2 CFR part 200. VA would not reference the specific section of part 200 as that is subject to change. The rest of paragraph (d) that further describes administrative costs remains as is. This change will effectively allow more applicants to apply for and potentially receive grants under this program.

This change is within VA's discretion under section 201(f)(1) of the Act, which permits VA to require such commitments and information as the Secretary considers necessary to carry out section 201. Section 201 of the Act also does not place limits on the percentage of the grant funds that may be used for administrative costs. VA makes no further changes to 38 CFR 78.140.

Changes to References to Office of Management and Budget (OMB) Control Numbers

Sections 78.10, 78.15, 78.95, 78.125, and 78.145 include information collections subject to the Paperwork Reduction Act. When the interim final rule published, these information collections had not yet been approved by OMB. In §§ 78.10, 78.15, 78.95, 78.125, and 78.145, VA thus included language noting that the Office of Management and Budget had approved the information collection provisions in this section, but it did not identify specific control numbers. However, these information collections have since been approved and designated with control numbers. VA now revises the language in §§ 78.10, 78.15, 78.95, 78.125, and 78.145 to state that OMB has approved the information collection provisions in this section under control number 2900–0904.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comments submitted in response to the interim final rule (87 FR 13806) and, for the reasons set forth in the foregoing responses to those comments, has concluded that no changes to the interim final rule are warranted based on those comments. However, VA is making minor changes to the regulation, as explained above, that do not require notice and comment before implementation. These changes are a logical outgrowth from the interim final rule, and even if they are not, they relieve requirements previously established through the interim final rule, and advance notice and the opportunity to comment is unnecessary under the terms of 5 U.S.C. 553(b)(B) because the amendments generally align with the statutory authority and do not create any burdens or restrictions on grantees under this program. Changes to 38 CFR 78.130 were already effectively subject to notice and comment as well through the rulemaking to amend part 50, as discussed above. Accordingly, based upon the authorities and reasons set forth in the interim final rule (87 FR 13806), as supplemented by the additional reasons provided in this document in response to comments received and based on the rationale set forth in this rule, VA is adopting the provisions of the interim final rule as a final rule with minor changes.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will only impact those entities that choose to participate in the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate. To the extent this final rule would have any impact on small entities, it would not have an impact on a substantial number of small entities.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA

consider the impact of paperwork and other information collection burdens imposed on the public. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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 interim final rule included provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that required approval by OMB (the provisions in the interim final rule are §§ 78.10, 78.15, 78.95, 78.125, and 78.145). Accordingly, under 44 U.S.C. 3507(d), VA submitted a copy of the interim final rule to OMB for review, and VA requested that OMB approve the collections of information on an emergency basis. VA did not receive any comments on the collections of information contained in the interim final rule. OMB approved the collections of information under control number 2900–0904.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.055, VA Suicide Prevention Program.

Congressional Review Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 78

Administrative practice and procedure, Grant programs—health, Grant programs—veterans, Grant programs—suicide prevention, Health care, Mental health programs, Reporting and recordkeeping requirements, Suicide prevention, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 23, 2024, 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.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the interim final rule amending 38 CFR chapter 1 by adding part 78, which was published at 87 FR 13806 (March 10, 2022) and amended by 87 FR 16101 (March 22, 2022), is adopted as a final rule with the following changes:

PART 78—STAFF SERGEANT PARKER GORDON FOX SUICIDE PREVENTION GRANT PROGRAM

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 1720F (note), sec. 201, Pub. L. 116–171, and as noted in specific sections.

■ 2. Amend part 78 by removing the term ''2900–TBD'' wherever it appears and adding in its place ''2900–0904''.

§ 78.50 [Amended]

■ 3. Amend § 78.50 by:

■ a. In paragraph (a), removing the term ''participants'' and in adding its place ''eligible individuals''.

■ b. Removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

■ c. In newly redesignated paragraph (c), removing the term ''participants'' and adding in its place ''eligible individuals''.

§ 78.95 [Amended]

■ 4. Amend § 78.95(b) by removing the term ''participants'' and adding in its place ''eligible individuals''.

■ 5. Revise § 78.130 to read as follows:

§ 78.130 Faith-based organizations.

Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in SSG Fox SPGP under this part in accordance with 38 CFR part 50.

■ 6. Amend § 78.140 by revising the first sentence of paragraph (d) to read as follows:

§ 78.140 Financial management and administrative costs.

* * * * *

(d) Costs for administration by a grantee will be consistent with 2 CFR part 200. * * *

[FR Doc. 2024–16586 Filed 7–31–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2024–0352; FRL–12131–01–R3]

Designations of Areas for Air Quality Planning Purposes; Maryland; Baltimore, MD 2015 8-Hour Ozone Nonattainment Area; Reclassification to Serious

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA or the ''Act''), the Environmental Protection Agency (EPA) is granting a request from the State of Maryland to reclassify the Baltimore, Maryland ozone nonattainment area from ''Moderate'' to ''Serious'' for the 2015 8-hour ozone national ambient air quality standards (2015 ozone NAAQS).

DATES: This final rule is effective on August 1, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2024–0352. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ian Neiswinter, Planning and Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2011. Mr. Neiswinter can also be reached via electronic mail at *neiswinter.ian@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Reclassification of the Baltimore, Maryland Area to Serious Ozone Nonattainment

Effective August 3, 2018 (83 FR 25776), the EPA classified the Baltimore, Maryland area (the Baltimore Area [1]) under the CAA as ''Marginal'' for the 2015 8-hour ozone NAAQS. Classification of this area as a Marginal ozone nonattainment area established a requirement that the area attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than three years from designation, *i.e.,* August 3, 2021. Effective November 7, 2022 (87 FR 60897), the EPA determined that the Baltimore Area failed to attain by the applicable Marginal attainment date. In that action, the EPA reclassified the Baltimore Area as Moderate nonattainment for the 2015 ozone NAAQS and established the Moderate attainment date as August 3, 2024. On July 18, 2024, the State of Maryland requested that the EPA reclassify the Baltimore Area from Moderate to Serious. The request letter from the State of Maryland is also provided in the docket of this rulemaking.

We are approving this State's reclassification request under section 181(b)(3) of the Act, which provides for ''voluntary reclassification.'' Because the plain language of section 181(b)(3) mandates that we approve such a request, the EPA is granting the State's request for voluntary reclassification under section 181(b)(3) for the Baltimore Area for the 2015 ozone NAAQS, and the EPA is reclassifying the area from Moderate to Serious. Because of this action, the Baltimore Area must now attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than nine years from the date of the initial designation as nonattainment, *i.e.,* August 3, 2027. Applicable SIP requirements and deadlines associated with the reclassification will be addressed in a separate notification.

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are ''impracticable, unnecessary or contrary to the public interest.'' The EPA has determined that public notice and comment for this action is unnecessary because our action to approve voluntary reclassification requests under CAA section 181(b)(3) is nondiscretionary both in its issuance and in its content. As such, notice and comment rulemaking procedures would serve no useful purpose.

The EPA also finds that there is good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' *See* 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. The schedule for required plan submittals for the Baltimore Area under the new classification will be proposed in a separate action. For this reason, the EPA finds good cause under APA section 553(d)(3) for this reclassification to become effective on the date of publication.

II. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- 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 Clean Air Act;

In addition, this action does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

[1] The Baltimore Area consists of the following counties/cities: Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, and the City of Baltimore in Maryland. *See* 40 Code of Federal Regulation (CFR) 81.321.

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action reclassifying the Baltimore Area from Moderate to Serious for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Adam Ortiz,

Regional Administrator, Region III.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.321 the table titled ''Maryland—2015 8-Hour Ozone NAAQS'' is amended by revising the entry for ''Baltimore, MD'' to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—2015 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area[2]	Designation		Classification	
	Date[3]	Type	Date[2]	Type
Baltimore, MD		Nonattainment	8/1/2024	Serious.
Anne Arundel County.				
Baltimore County.				
Carroll County.				
Harford County.				
Howard County.				
City of Baltimore.				
* * * * * * *				

* * * * *

[FR Doc. 2024–16899 Filed 7–31–24; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 512

[GSAR Case 2022–G506, Docket No. 2022–0020; Sequence No. 1]

RIN 3090–AK57

General Services Administration Acquisition Regulation; Standardizing the Identification of Deviations in the General Services Administration Acquisition Regulation; Correction

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule; correction.

SUMMARY: GSA is issuing a correction to GSAR Case 2022–G506; Standardizing the Identification of Deviations in the General Services Administration Acquisition Regulation; which published in the **Federal Register** on Jul 3, 2024, and is effective August 2, 2024. This correction makes an update to the reference to ''commercial Services''.

DATES: *Effective:* August 2, 2024.

FOR FURTHER INFORMATION CONTACT: Bryon Boyer, *Bryon.Boyer@gsa.gov* or call 817–850–5580. Please cite GSAR Case 2022–G506, Correction.

SUPPLEMENTARY INFORMATION:

Correction

■ In rule FR Doc. 2024–14416, published in the **Federal Register** at 89 FR 55085, on July 3, 2024, on page 55086, in the first column, in section 512.301, amendatory instruction ''3a.'' is corrected to read ''a. Amending the section heading by removing ''commercial services'' and adding ''commercial services (FAR DEVIATION)'' in its place; and''

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2024–16344 Filed 7–31–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2021–0093]

RIN 2105–AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Withdrawal of Direct Final Rule

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of adverse comments, the U.S. Department of Transportation (DOT) is withdrawing the direct final rule ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs,'' published on June 21, 2024.

DATES: Effective August 1, 2024, DOT withdraws the direct final rule published at 89 FR 51984, on June 21, 2024.

FOR FURTHER INFORMATION CONTACT: Bohdan Baczara, Deputy Director, Office

[2] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[3] This date is August 3, 2018, unless otherwise noted.

of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; *ODAPCwebmail@dot.gov.*

SUPPLEMENTARY INFORMATION: On June 21, 2024, DOT published a direct final rule (89 FR 51984). We stated in that direct final rule that if we received adverse comment by June 22, 2024, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. Because DOT subsequently received adverse comment on that direct final rule, we are withdrawing the direct final rule.

DOT published a parallel proposed rule on the same day (89 FR 52002, June 21, 2024) as the direct final rule, which proposed the same rule changes as the direct final rule. The proposed rule invited comment on the substance of these rule changes. DOT will respond to comments as part of any final action taken on the parallel proposed rule. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Signed pursuant to authority delegated at 49 CFR 1.27(c) in Washington, DC.

Subash Iyer,

Acting General Counsel.

■ Accordingly, as of August 1, 2024, DOT withdraws the direct final rule amending 49 CFR part 40, which published at 89 FR 51984, on June 21, 2024.

[FR Doc. 2024–16765 Filed 7–31–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XE141]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the Angling Category Gulf of Maine Area Trophy Fishery for 2024

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Angling category Gulf of Maine area fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches (185 centimeters) curved fork length or greater)) Atlantic bluefin tuna (BFT). This action applies to Highly Migratory Species (HMS) Angling and HMS Charter/Headboat permitted vessels when fishing recreationally.

DATES: Effective 11:30 p.m., local time, July 31, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Anna Quintrell, *anna.quintrell@noaa.gov* or Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: BFT fisheries are managed under the 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota, established by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure action for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

The 2024 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2024. The Angling category season opened January 1, 2024, and continues through December 31, 2024. As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area per § 635.27(a)(3)). The Angling category baseline quota is 297.4 mt, of which 9.2 mt (3.1 percent of the annual Angling category quota) is sub-allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 2.3 mt (25 percent of the annual large medium and giant BFT Angling category quota) allocated for each of the following areas: north of latitude (lat.) 42° N (the Gulf of Maine area); south of lat. 42° N and north of lat. 39°18′ N (the southern New England area); south of lat. 39°18′ N and outside of the Gulf of Mexico (the southern area); and the Gulf of Mexico region. Trophy BFT measure 73 inches (185 centimeters) curved fork length or greater. This closure action applies to the Gulf of Maine area.

Angling Category Trophy Bluefin Tuna Gulf of Maine Fishery Closure

Based on landings data from the NMFS Automated Catch Reporting System, as well as average catch rates and anticipated fishing conditions, NMFS projects the Angling category Gulf of Maine area trophy BFT subquota of 2.3 mt has been reached and exceeded. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT in the Gulf of Maine area by persons aboard HMS Angling and HMS Charter/Headboat permitted vessels (when fishing recreationally) must cease at 11:30 p.m. local time on July 31, 2024. This closure will remain effective through December 31, 2024. This action applies to HMS Angling and HMS Charter/Headboat permitted vessels when fishing recreationally for BFT, and is taken consistent with the regulations at § 635.28(a)(1). This action is intended to prevent further overharvest of the Angling category Gulf of Maine area trophy BFT subquota. NMFS previously closed the 2024 trophy BFT fishery in the southern area on February 9, 2024 (89 FR 10007, February 13, 2024), in the southern New England area on May 2, 2024 (89 FR 37139, May 6, 2024), and in the Gulf of Mexico area on May 29, 2023 (89 FR 47105, May 31, 2024). Therefore, with this closure of the Gulf of Maine area trophy BFT fishery, the Angling category trophy BFT fishery will be closed in all areas for 2024.

If needed to ensure available quotas or subquotas are not exceeded or to enhance fishing opportunities, subsequent Angling category adjustments or closures will be published in the **Federal Register** per §§ 635.27(a)(7) and 635.28(a)(1). Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 centimeters) to less than 73 inches (185 centimeters), and any further Angling category adjustments, is available at *https://hmspermits.noaa.gov.* During a closure, fishermen aboard HMS Angling and HMS Charter/Headboat permitted vessels when fishing recreationally may continue to catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Per § 635.5(c)(1), HMS Angling and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *https://hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) and regulations at 50 CFR part 635, and this action is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and opportunity to comment is impracticable and contrary to the public interest as this fishery is currently underway and, based on the most recent landings information, the Angling category Gulf of Maine area trophy BFT fishery subquota has been reached and exceeded. Delaying this action could result in further excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the Gulf of Maine area trophy BFT fishery before additional landings of these sizes of BFT occur. Taking this action does not raise conservation and management concerns, and would support effective management of the BFT fishery. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment and closure criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 29, 2024.

Lindsay Fullenkamp,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–17000 Filed 7–30–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125294–4091–02; RTID 0648–XE041]

Fisheries off West Coast States; the Highly Migratory Species Fishery; El Nino Pacific Loggerhead Conservation Area Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening of closure.

SUMMARY: NMFS is reopening the Pacific Loggerhead Conservation Area (LCA) closure that became effective on June 1, 2024, because the sea surface temperatures (SSTs) in the Southern California Bight (SCB) for the months of May and June 2024 indicate that SSTs have returned to normal or below normal and that El Niño conditions are no longer present in the SCB. The LCA prohibits fishing with large-mesh drift gillnet (DGN) gear (≥14 inches mesh) off the coast of southern California east of the 120° W meridian from June 1, 2024, through August 31, 2024. Based on recent observations of SSTs in the SCB along with the Climate Prediction Center (CPC) report related to changing El Niño conditions, NMFS has determined that reopening the area is warranted.

DATES: Effective 12:01 a.m., Pacific Daylight Time, on August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Chris Fanning, West Coast Region (WCR), NMFS, (562) 980–4198, *chris.fanning@noaa.gov.*

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (50 CFR part 660, subpart K) and occurs off the coast of California. NMFS regulations state that ''no person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W meridian from June 1 through August 31 during a forecasted, or occurring, El Niño event off the coast of southern California'' (50 CFR 660.713(c)(2)). This area, which overlaps with the SCB, is referred to in the regulations as the ''Pacific loggerhead conservation area'' or ''LCA.''

Under 50 CFR 660.713(c)(2)(ii), the Assistant Administrator (AA) is to rely on information developed by NOAA offices (the CPC and the West Coast Office of the Coast Watch program) to make the determination that an El Niño event is forecasted or occurring off southern California. The AA is to use monthly SST charts to determine whether there are warmer-than-normal SSTs off southern California ''during the months prior to the closure months for years in which an El Niño event has been declared'' by the CPC. Specifically, the AA is to use SST data from the second and third months prior to the month of closure. Thus, to make a determination for a closure to begin in June, the AA used data from March and April.

These regulations protect loggerhead sea turtles, specifically the North Pacific Loggerhead Distinct Population Segment, which are listed as endangered under the Endangered Species Act. The regulations initially were implemented to address a reasonable and prudent alternative

included in NMFS' 2000 biological opinion for this fishery. The current biological opinion (2023) analyzed maintaining the closed area as a management measure in the U.S. West Coast Fishery Management Plan for Highly Migratory Species.

On May 9, 2024, the CPC issued an El Niño Advisory. Under the CPC's El Nino/Southern Oscillation (ENSO) diagnostic system, an El Niño Advisory is issued when El Niño conditions are observed and expected to continue. NMFS staff reviewed the SST anomalies in the SCB during March and April of 2024, relying on SST maps available through NOAA's Coast Watch program (for details see *https://coastwatch.pfeg.noaa.gov/erddap/index.html*). These maps indicated that SSTs were above normal in the SCB. NMFS determined that El Niño conditions were occurring off southern California based on SSTs that were warmer than normal during March and April 2024, consistent with regulations at 50 CFR 660.713(c)(2)(ii), and implemented the LCA on June 1, 2024 (89 FR 47106).

Per regulations at 50 CFR 660.713(c)(2)(iii), if SSTs return to normal or below normal during a closure period, the AA may reopen the fishery after publishing a **Federal Register** notice announcing that El Niño conditions are no longer present in the SCB.

The CPC report on June 13, 2024, indicated a transition from El Niño to ENSO-neutral/La Nina Watch conditions based on cooler SSTs observed and a forecasted continued cooling trend in the Pacific Ocean. The most recent CPC report on July 11, 2024, indicates ENSO-neutral is expected to continue for the next several months, with La Niña favored to emerge during August–October (70 percent chance) and persist into the Northern Hemisphere winter 2024–2025 (79 percent chance during November–January). Additionally, SST data summarized and available on the West Coast Office of the Coast Watch program website indicates cooler than normal temperatures in the SCB were reported in May, June, and July.

Based on this information, NMFS has determined that El Niño conditions are no longer present and that we may reopen the LCA under the regulations. NMFS has determined that re-opening the LCA is warranted to increase fishing opportunities and lessen regulatory burden on vessels' time-area access, while complying with legal and regulatory requirements to ensure the conservation of loggerhead sea turtles.

The LCA closure prohibits DGN fishing in the LCA through August 31, 2024. Fishing with DGN gear also is prohibited within 75 nautical miles of the mainland shore through August 14 under 50 CFR 660.713(d), which includes much of the LCA. Thus, this closure primarily affects the DGN fishery during the last two weeks in August, when fishing with DGN gear would otherwise be open in much of the LCA.

Most DGN vessels typically commence fishing on or near August 15, depending on various factors including when swordfish are present on the fishing grounds in commercially viable quantities. Currently, one vessel is present in the area immediately outside the LCA. We anticipate that up to seven vessels may start fishing in August.

Classification

This action is allowed by current regulations at 50 CFR 660.713 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment for this action pursuant to the authority set forth at 5 U.S.C. 553(b)(B). Notice and comment procedures for this action are impracticable and contrary to the public interest. Specifically, the regulations allow for lifting the DGN fishing restrictions in response to updated weather information. The most recent El Niño status determination occurred on July 11, 2024, and regulations provide that the AA may publish a **Federal Register** notice announcing that El Niño conditions are no longer present off the coast of southern California and may terminate the closure prior to August 31. The closure period began on June 1 and restricts fishing for swordfish and sharks within a defined geographic area. Relieving this restriction will allow fishers access to the area while swordfish and other marketable highly migratory species are available on the fishing grounds. Delaying this action for 30 days would prevent active fishers from accessing some of the fishing grounds in the LCA. Given the change in conditions, we expect that loggerhead turtles leave the LCA with the cooler temperatures and that there is little likelihood of turtle entanglements or interactions in the area. Therefore, we find that there is good cause to waive the 30-day notice and opportunity for public comment requirements.

The APA excepts from the 30-day delay in effective date a rule that ''grants or recognizes an exception or relieves a restriction'' (5 U.S.C. 553(d)(1)). This rule relieves a restriction on DGN fishing in the LCA, and the 30-day delay in effective date therefore is not required.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2024.

Lindsay Fullenkamp,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–16906 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240726–0206; RTID 0648–XE135]

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Interim Specifications and Management Measures for Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements interim annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), pursuant to an order issued on July 10, 2024, by the U.S. District Court for the Northern District of California in *Oceana, Inc.,* v. *Raimondo, et al..* Specifically, this rule re-instates the annual specifications and management measures that were in place for the 2023–2024 fishing year in whole, until the 2024–2025 annual Pacific sardine specifications and management measures are effective.

DATES: Effective July 29, 2024.

FOR FURTHER INFORMATION CONTACT: Katie Davis, West Coast Region, NMFS, (323) 372–2126, *Katie.Davis@noaa.gov.*

SUPPLEMENTARY INFORMATION: This final rule re-instates the harvest specifications and management measures that were in place for the 2023–2024 Pacific sardine fishing year (88 FR 41040, June 23, 2023) and that expired on June 30, 2024. These interim harvest specifications and management measures are effective until the 2024–2025 annual Pacific sardine specifications are effective. Proposed 2024–2025 Pacific sardine harvest specifications and management

measures were published in the **Federal Register** on June 21, 2024 (89 FR 52005).

This action is necessary to comply with a June 28, 2024 remedy order and July 10, 2024 amending remedy order issued by the U.S. District Court for the Northern District of California (the Court) in *Oceana, Inc.,* v. *Raimondo, et al.,* No. 5:21–cv–05407–VKD (N.D. Cal., filed July 14, 2021), which directs NMFS to implement interim specifications that are no less restrictive than the 2023–2024 specifications, that take effect upon the expiration of the 2023–2024 specifications (*i.e.,* July 1, 2024), and remain in effect until NMFS promulgates 2024–2025 annual specifications.

The interim specifications being implemented by this action can be found in table 1, and the additional regulations and management measures are listed below table 1.

TABLE 1—INTERIM HARVEST SPECIFICATIONS, IN METRIC TONS

[mt]

Overfishing limit (OFL)	Acceptable biological catch (ABC)	Harvest guideline (HG)	Annual catch limit (ACL)	Annual catch target (ACT)
5,506	3,953	0	3,953	3,600

This final rule also temporarily re-instates the following management measures for commercial sardine harvest:

1. The primary directed commercial fishery is closed.

2. If landings in the live bait fishery reach 2,500 mt of Pacific sardine, then a 1 mt per-trip limit of sardine would apply to the live bait fishery.

3. An incidental per-landing limit of 20 percent (by weight) of Pacific sardine applies to other coastal pelagic species (CPS) primary directed fisheries (*e.g.,* Pacific mackerel).

4. If the ACT of 3,600 mt is attained, then a 1 mt per-trip limit of Pacific sardine landings would apply to all CPS fisheries (*i.e.,* items 2 and 3 of this list would no longer apply).

5. An incidental per-landing allowance of 2 mt of Pacific sardine would apply to non-CPS fisheries until the ACL is reached.

All sources of catch, including any exempted fishing permit (EFP) set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries and minor directed fishing, will be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when catch reaches the management measure limits, as well as any resulting changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS will make announcements through other means available, including emails to fishermen, processors, and state fishery management agencies.

Classification

NMFS has the authority to implement annual harvest specifications and management measures for Pacific sardine under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*). The NMFS Assistant Administrator has determined that this interim specifications rule is necessary to comply with a Court order.

The NMFS Assistant Administrator has determined that good cause exists to issue this rule without advance notice in a proposed rule or the opportunity for public comment (see 5 U.S.C. 553(b)(3)(B)) and to make the rule effective immediately without providing a 30-day delay after publication (see 5 U.S.C. 553(d)(3)). NMFS is obligated to implement these measures immediately to comply with the Court's June 28, 2024 Order, which ''directs NMFS to implement interim specifications effective July 1, 2024 that are no less restrictive than the 2023–2024 specifications,'' and the Court's July 10, 2024 Order, which amended the June 28, 2024 Order to ''implement interim specifications (including a further interim rule if necessary) that are no less restrictive than the current 2023–2024 annual specifications as soon as possible . . . Such interim specifications shall remain in effect until issuance of the final 2024–2025 annual specifications.'' To comply with the July 10, 2024 order, NMFS must implement this rule prior to the expiration of the first interim specifications rule on August 1, 2024 (89 FR 57093, July 12, 2024). NMFS does not have discretion to implement measures that do not comply with the order in substance or timing. Providing prior notice and an opportunity for comment and delaying the effective date of this rule for 30 days after publication is therefore unnecessary and impracticable, and good cause exists to make this interim rule effective immediately.

This final rule is exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–16942 Filed 7–29–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 148
Thursday, August 1, 2024

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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 109, 110, and 300

[Notice 2024–17]

Political Party Rules

AGENCY: Federal Election Commission.

ACTION: Notification of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking (''Petition'') filed on June 14, 2016, by the Minnesota Democratic-Farmer-Labor Party and its Chair, Ken Martin. The Petition asked the Commission to amend several of its regulations applicable to state, district, or local committees of political parties. On June 26, 2024, the same petitioners submitted a new petition that incorporates the substance of this Petition while ''revok[ing]'' this Petition. Given the new petition, the Commission is not initiating a rulemaking in response to this Petition.

DATES: August 1, 2024.

ADDRESSES: Copies of the Petition, the Notification of Availability, public comments, and related documents are available on the Commission's website, *https://www.fec.gov/fosers/* (reference REG 2016–03, Political Party Rules).

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act [1] (the ''Act'') and Commission regulations place various fundraising and spending limitations, prohibitions, and reporting requirements on state, district, and local political party committees. On June 14, 2016, the Minnesota Democratic-Farmer-Labor Party and its Chair, Ken Martin (collectively, ''Petitioners''), submitted a Petition for Rulemaking that asked the Commission to amend several regulations applicable to political parties.[2]

First, the Petition asked the Commission to narrow the regulatory definition of ''Federal election activity,'' [3] which includes certain activities that urge, encourage, or assist people to vote or to register to vote.[4] The Act and Commission regulations require a state, district, or local committee of a political party to pay for Federal election activity with either entirely Federal funds or, in other instances, a mix of Federal funds and ''Levin funds.'' [5]

Second, the Petition asked the Commission to amend the regulation requiring political parties to use a Federal account to pay the salary, wages, and fringe benefits of any employee who spends more than 25 percent of that individual's time on ''Federal election activities'' or on conduct ''in connection with a Federal election.'' [6] Specifically, the Petition asked the Commission to delete the reference to ''Federal election activities,'' so that the requirement would cover only employee activities ''in connection with a Federal election.''

Finally, the Petition asked the Commission to consider additional regulatory modifications listed in Commission Agenda Document No. 15–54–A, a proposed resolution that recommended amending several rules that would (1) allow political parties to ''discuss issue advertisements with candidates,'' ''republish parts of candidate materials in party materials,'' and ''distribute volunteer campaign materials without triggering coordination limits,'' [7] (2) expand political parties' ability to engage in volunteer activities such as volunteer mail drives, phone banks, and literature distribution,[8] and (3) modify the definition of ''Federal election activity'' to permit political parties to register voters and urge citizens to vote on behalf of state and local candidates using state funds and to ''employ people to engage in state and local get-out-the-vote activities with state funds.'' [9]

The Commission published a Notification of Availability requesting public comments on the Petition.[10] The Commission received 18 comments in response, including one from Petitioners. Most comments supported the Petition; one comment opposed it.

On June 26, 2024, Petitioners submitted a new petition for rulemaking. The new petition includes a copy of this Petition, incorporates this Petition by reference, and ''revokes'' this Petition.

The Commission has decided not to initiate a rulemaking in response to this Petition. In deciding whether to initiate a rulemaking in response to a petition, the Commission generally considers five factors: (1) the Commission's statutory authority; (2) policy considerations; (3) the desirability of proceeding on a case-by-case basis; (4) the necessity or desirability of statutory revision; and (5) available agency resources.[11]

Here, the Commission has concluded that its available resources would be more efficiently and effectively utilized by focusing on the new petition for rulemaking submitted by Petitioners on June 26, 2024, which addresses the same issues, and disposing of this Petition.

Copies of the Petition, the Notification of Availability, public comments, and related documents are available on the Commission's website, *https://www.fec.gov/fosers/* (reference REG 2016–03, Political Party Rules).

Dated: July 25, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–16871 Filed 7–31–24; 8:45 am]

BILLING CODE 6715–01–P

[1] 52 U.S.C. 30101–45.

[2] REG 2016–03 (Political Party Rules), Petition for Rulemaking to Strengthen Political Parties (June 14, 2016).

[3] *See* 11 CFR 100.24.

[4] *Id.* § 100.24(a)(2) and (3).

[5] 52 U.S.C. 30125(b); 11 CFR 300.32.

[6] *See* 11 CFR 106.7(c)(l), (d)(l)(i) and (ii) and 300.33(d)(l) and (2).

[7] *See* 11 CFR 109.37.

[8] *See id.* §§ 100.87, 100.47.

[9] *See id.* § 100.24.

[10] Political Party Rules, 81 FR 69721 (Oct. 7, 2016).

[11] 11 CFR 200.5.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 109, 110, and 300

[Notice 2024–18]

Political Party Rules II

AGENCY: Federal Election Commission.

ACTION: Notification of availability of petition for rulemaking.

SUMMARY: On June 26, 2024, the Federal Election Commission received a Petition for Rulemaking asking the Commission to revise existing rules applicable to state, district, and local committees of political parties. The Commission seeks comments on this Petition.

DATES: Comments must be submitted on or before September 30, 2024.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at *https://www.fec.gov/fosers/*, reference REG 2024–07. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Ms. Amy L. Rothstein, Assistant General Counsel for Policy, 1050 First Street NE, Washington, DC 20463 (U.S. mail) or 20002 (all other delivery services).

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel for Policy, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 26, 2024, the Federal Election Commission received a Petition for Rulemaking (''Petition'') from the Minnesota Democratic Farmer-Labor Party and its Chair, Ken Martin (collectively, ''Petitioners''), asking the Commission to amend various regulations applicable to state, district, and local committees of political parties.[1] The Petition ''revokes'' a previous petition for rulemaking submitted by the same Petitioners on June 15, 2016, ''incorporate[s] . . . by reference'' the issues raised in the 2016 petition, and highlights three ''priority issues'' for consideration by the Commission.[2]

First, Petitioners ask the Commission to amend 11 CFR 300.33(d)(3) by omitting the phrase ''Federal election activities.'' Section 300.33(d)(3) applies to salaries, wages, and fringe benefits paid for employees of state, district, or local party committees or organizations. It provides that ''employees who spend none of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election may be paid entirely with funds that comply with State law.'' [3]

Second, Petitioners ask the Commission to reconsider and revise the definitions of ''voter registration activity'' and ''get-out-the-vote activity'' at 11 CFR 100.24(a)(2) and (3). Section 100.24(a)(2) defines ''voter registration activity'' to include, among other things, ''[e]ncouraging or urging potential voters to register to vote,'' ''[p]reparing and distributing information about registration and voting,'' and ''[a]ny other activity that assists potential voters to register to vote.'' Section 100.24(a)(3) defines ''get-out-the-vote activity'' to include, among other things, ''[e]ncouraging or urging potential voters to vote,'' ''informing potential voters'' about ''[t]imes when polling places are open'' and the ''location of particular polling places,'' and ''[a]ny other activity that assists potential voters to vote.''

Third, Petitioners ask the Commission to codify a ''modernized standard'' to determine when volunteer activities related to mailings by state or local parties comply with the Act's ''volunteer mailing exemption.'' [4] Sections 100.87 and 100.147 of the Commission's regulations provide that the ''payment by a state or local committee of a political party of the costs of campaign materials . . . used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party'' is not a contribution or expenditure if certain conditions are met.[5]

The Petition also incorporates and attaches several documents, including Petitioners' 2016 petition. The 2016 petition asked the Commission to consider additional regulatory changes previously proposed in an agenda document presented at the Commission's Open Meeting on October 29, 2015.[6] These proposed changes included (1) allowing political parties ''to discuss issue advertisements with candidates,'' ''republish parts of candidate materials in party materials,'' and ''distribute volunteer campaign materials without triggering coordination limits,'' [7] (2) ''[e]xpand[ing] political party freedom to engage in volunteer activities such as volunteer mail drives, phone banks, and literature distribution,'' [8] and (3) modifying the definition of ''Federal election activity'' to permit ''political parties to register voters and urge citizens to vote on behalf of state and local candidates free from FEC regulation'' and ''to employ people to engage in state and local get-out-the-vote activities with state funds.'' [9]

The Commission seeks comments on the Petition. The public may inspect the Petition on the Commission's website at *https://www.fec.gov/fosers.*

The Commission will not consider the Petition's merits until after the comment period closes. The Commission will consider the Petition and any comments that it receives before deciding whether to initiate a rulemaking. The Commission will publish the results of its decision in the **Federal Register**.

Dated: July 25, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–16873 Filed 7–31–24; 8:45 am]

BILLING CODE 6715–01–P

[1] Petition for Rulemaking to Strengthen Political Parties (''Petition''), REG 2024–07 (June 26, 2024).

[2] Petition at 1–2. Documents concerning the Petitioners' 2016 petition for rulemaking are available on the Commission's website. *See, e.g.,* Petition for Rulemaking to Strengthen Political Parties, REG 2016–03 (June 14, 2016) *https://sers.fec.gov/fosers/showpdf.htm?docid=351550.* On October 7, 2016, the Commission published a notification of availability in the **Federal Register** and solicited and received comments on the 2016 petition. *See* Political Party Rules, 81 FR 69721 (Oct. 7, 2016), *https://sers.fec.gov/fosers/showpdf.htm?docid=353435.*

[3] *Id.* § 300.33(d)(3).

[4] *See* 52 U.S.C. 30101(8)(B)(ix), (9)(B)(viii); 11 CFR 100.87, 100.147.

[5] 11 CFR 100.87 and 100.147 (implementing 52 U.S.C. 30101(8)(B)(ix) and (9)(B)(viii)).

[6] *See* Petition at 18–19 (attaching Commission Agenda Document No. 15–54–A, Regulatory Relief for Political Parties, Commissioner Lee Goodman (Oct. 20, 2015), *https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-54-a.pdf*).

[7] *See* 11 CFR 109.37.

[8] *See id.* §§ 100.87, 100.147.

[9] *See id.* § 100.24.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2024–19]

Requirement To File FEC Form 3–Z

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission proposes to amend its regulations by removing the requirement that the principal campaign committee of a candidate with multiple authorized committees must report information on FEC Form 3–Z. The Commission seeks comment on the proposed rule and has made no final decision on the issues presented in this rulemaking.

DATES: Comments must be received on or before September 3, 2024. The Commission may hold a public hearing on this notice of proposed rulemaking. Commenters wishing to testify at a hearing must so indicate in their comments. If a hearing is to be held, the Commission will publish a notification in the **Federal Register** announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at *https://sers.fec.gov/fosers,* reference REG 2024–04. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Ms. Amy Rothstein, Assistant General Counsel for Policy, 1050 First Street NE, Washington, DC 20463 (U.S. mail) or 20002 (all other delivery services).

Each commenter must provide, at a minimum, the commenter's first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Amy Rothstein, Assistant General Counsel for Policy, or Jennifer Waldman, Attorney, 1050 First Street NE, Washington, DC (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend its regulations by removing the requirement that the principal campaign committee of a candidate with multiple authorized committees must report information on FEC Form 3–Z. The Commission is seeking comment on the proposed rule change. In particular, the Commission seeks comment on whether and for what purpose the public obtains information from FEC Form 3–Z or otherwise uses FEC Form 3–Z.

I. Background

The Federal Election Campaign Act (the ''Act'') [1] and Commission regulations require each candidate to register a principal campaign committee within 15 days of becoming a candidate.[2] A candidate may also authorize other political committees to receive contributions or make expenditures on the candidate's behalf by designating the committees in writing and filing the designations with the candidate's principal campaign committee.[3]

The Act requires ''each designation, statement or report of receipts or disbursements made by an authorized committee'' to be filed with the candidate's principal campaign committee.[4] The Act further requires each principal campaign committee, in turn, to ''receive'' these designations, statements and reports and to ''compile and file'' them pursuant to the Act.[5]

In 1980, the Commission promulgated a regulation (11 CFR 104.3(f)) to implement these requirements: Section 104.3(f) requires each candidate's principal campaign committee to file reports submitted to it by the candidate's other authorized committees, along with its own report.[6] In addition, § 104.3(f) requires the principal campaign committee to file FEC Form 3–Z to report specific consolidated information gleaned from the authorized committees' reports when it submits those reports to the Commission.[7] It is this FEC Form 3–Z that the Commission now proposes to remove.

When the Commission first started requiring FEC Form 3–Z, political committees filed their reports only in paper form and the Commission made the reports publicly available on paper and microfiche in the Commission's Public Records room. By requiring a candidate's principal campaign committee to consolidate information about the financial activity of all of the candidate's authorized committees on FEC Form 3–Z, the Commission made it easier for the public to obtain a comprehensive picture of the candidate's receipts and disbursements during the reporting period.

Public access to political committees' reports has expanded dramatically since 1980, however, due in large part to statutory revisions and technological developments. In 1999, Congress amended the Act to provide for mandatory and discretionary electronic filing; [8] as a result, all political committees that have or reasonably expect to have contributions or expenditures exceeding $50,000 in a calendar year must electronically file their reports directly with the Commission, and other persons may do so if they choose.[9] Further, Congress amended the Act to require the Commission to make all reports filed electronically with the Commission publicly available on the internet within 24 hours of receipt and within 48 hours of receipt for reports not filed electronically.[10]

Congress also amended the Act in 2002 to require the Commission to maintain a central website ''to make accessible to the public all publicly available election-related reports and information'' required to be filed under the Act.[11] The posted reports and

[1] 52 U.S.C. 30101–45.

[2] *Id.* 30102(e)(1); 11 CFR 101.1(a); *see also* 52 U.S.C. 30101(5) (''The term 'principal campaign committee' means a political committee designated and authorized by a candidate under section 30102(e)(1) of this title.''); 11 CFR 100.5(e)(1).

[3] 52 U.S.C. 30102(e)(1); 11 CFR 101.1(b); *see also* 52 U.S.C. 30101(6) (''The term 'authorized committee' means the principal campaign committee or any other political committee authorized by a candidate under section 30102(e)(1) of this title to receive contributions or make expenditures on behalf of such candidate.''); 11 CFR 100.5(f)(1).

[4] 52 U.S.C. 30102(f)(1).

[5] *Id.* 30102(f)(2).

[6] 11 CFR 104.3(f).

[7] *Id.*

[8] Treasury and General Government Appropriations Act, 2000, Public Law 106–58, sec. 639(a), 113 Stat. 430, 476 (1999) (''2000 Appropriations Act''); 52 U.S.C. 30104(a)(11)(A).

[9] 11 CFR 104.18(a) (requiring electronic filing for certain political committee); 11 CFR 104.18(b) (authorizing other committees to file electronically if they choose to do so); Electronic Filing of Reports by Political Committees, 65 FR 38415 (June 21, 2000), *https://sers.fec.gov/fosers/showpdf.htm?docid=382* (last visited July 1, 2024).

[10] 2000 Appropriations Act (requiring posting within 24 hours); Bipartisan Campaign Reform Act of 2002, Public Law 107–155, sec. 501, 116 Stat. 81, 114 (2002) (''BCRA'') (requiring posting within 48 hours); 52 U.S.C. 30104(a)(11)(B), (d)(2).

[11] BCRA, sec. 502, 116 Stat. 115; 52 U.S.C. 30112(a). The Commission had launched its website, *FEC.gov*, six years earlier. *See* FEC Annual Report 1996 at 1, 5 (1997), *https://www.fec.gov/resources/cms-content/documents/ar96.pdf* (last visited July 1, 2024).

related information can be searched, sorted, and downloaded.[12]

II. Proposed Changes to 11 CFR 104.3

The Commission proposes to amend § 104.3(f) by eliminating the requirement that principal campaign committees file FEC Form 3–Z. Although FEC Form 3–Z served a useful purpose when it was introduced more than 40 years ago, the information that it provides essentially duplicates information that is now filed directly with the Commission and readily available to the public in a searchable, sortable, and downloadable format. Accordingly, FEC Form 3–Z appears to have been rendered obsolete.

The Commission does not intend or anticipate that its proposal, if adopted, would have a detrimental effect on disclosure. Indeed, only candidates with more than one authorized committee must file FEC Form 3–Z, and the number of candidates with more than one authorized committee who are not also mandatory electronic filers is vanishingly small: Of the nearly 4,000 registered authorized committees that have filed in the 2023–2024 election cycle, not one would trigger the FEC Form 3–Z requirement without also triggering the electronic filing requirement.[13]

The Commission seeks comment on this proposal. In particular, would the elimination of FEC Form 3–Z negatively affect disclosure of information about the financial activities of principal campaign committees and their authorized committees? In what manner and for what purpose does the public currently obtain information from FEC Form 3–Z or otherwise use FEC Form 3–Z?

List of Subjects in 11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend 11 CFR part 104 as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 1. The authority citation for part 104 is revised to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(f), (g) and (i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

■ 2. Amend § 104.3 by revising paragraph (f) to read as follows:

§ 104.3 Contents of reports (52 U.S.C. 30104(b), 30114).

* * * * *

(f) *Consolidated reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. Such consolidated reports shall include:

(1) Reports submitted to it by any authorized committees; and

(2) The principal campaign committee's own reports.

* * * * *

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–16843 Filed 7–31–24; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2024—16]

Administrative Fines Program Expansion

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Since the inception of the Federal Election Commission's Administrative Fines Program in 2000, the Commission has been assessing civil monetary penalties for certain violations of the reporting requirements of the Federal Election Campaign Act of 1971, as amended. In 2013, Congress authorized the Commission to expand the Administrative Fines Program to include violations for reporting requirements not currently covered. Accordingly, the Commission proposes to extend its Administrative Fines Program to include violations in the timely filing of 24-Hour Reports of Independent Expenditures, 48-Hour Reports of Independent Expenditures, and 24-Hour Notices of Electioneering Communications. This proposal will allow more efficient and predictive adjudication of these filing violations. The Commission invites public comment on the proposed regulatory amendments.

DATES: Comments must be received on or before September 3, 2024. The Commission may hold a public hearing on this rulemaking. Commenters wishing to testify at a hearing must so indicate in their comments. If a hearing is to be held, the Commission will publish a notification in the **Federal Register** announcing the date and time of the hearing.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at *https://sers.fec.gov/fosers,* reference REG 2013–06. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Mr. Robert M. Knop, Assistant General Counsel for Policy, 1050 First Street NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other delivery services).

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Robert M. Knop, Assistant General Counsel for Policy, Cheryl Hemsley, Attorney, or Lindsay Bird, Attorney, 1050 First Street NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other delivery services), (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Commission's Administrative Fines Program (''AFP''),[1] the Commission may utilize a streamlined process to assess civil monetary penalties for certain violations of the reporting requirements of the Federal Election Campaign Act of 1971, as amended (''FECA''). Currently, the Commission assesses civil penalties through the AFP when a political committee fails to file timely reports as required by 52 U.S.C. 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods).

In 2013, Congress authorized the Commission to expand the scope of the

[12] *See, e.g.,* 52 U.S.C. 30104(i)(4) (requiring Commission to ensure, ''to the greatest extent practicable,'' that certain information is publicly available on its website ''in a manner that is searchable, sortable, and downloadable'').

[13] FEC, *Committees, https://www.fec.gov/data/browse-data/?tab=committees* (last visited July 1, 2024).

[1] *See* 52 U.S.C. 30109(4); 11 CFR part 111, subpart B.

AFP to encompass violations for reports filed under 52 U.S.C. 30104(c) (certain independent expenditures), 52 U.S.C. 30104(e) (certain Federal election activity reports), 52 U.S.C. 30104(f) (notices of electioneering communications), 52 U.S.C. 30104(g) (24- and 48-hour reports of independent expenditures), 52 U.S.C. 30104(i) (bundled contribution reports), and 52 U.S.C. 30105 (certain convention reports).[2]

On March 30, 2015, the Commission published a Notice of Availability seeking public comment on a Petition for Rulemaking (the ''Petition'') that asked the Commission to expand the scope of the AFP to encompass the additional categories of reporting violations included in the 2013 statutory expansion.[3] The Commission received two substantive comments. One comment agreed with the Petition that the proposed changes ''would advance the goals of statutory compliance, enforcement and sound legal administration.'' The other comment asked the Commission to be ''lenient on small organizations'' in administering the AFP.[4]

After reviewing these comments and engaging in additional deliberation, the Commission is now proposing the changes described in this document. The Commission seeks comments on these proposals.

II. Background of the Administrative Fines Program and the Scope of Proposed Regulations: What reporting violations are covered in the proposed expansion?

Since its implementation, the AFP's streamlined process has aimed to efficiently address applicable reporting violations based on a pre-existing penalty formula, providing transparency to affected persons while conserving Commission resources.

In 2000, the Commission set out the penalty formulas for most violations using four factors to calculate fines: (1) the election sensitivity of the report, (2) whether the report is considered late or not filed, (3) the level of activity (or estimated level of activity) on the report, and (4) the committee's number of prior violations. These factors are incorporated into penalty tables at 11 CFR 111.43.

The Commission uses a different formula to calculate civil penalties when principal campaign committees fail to timely file 48-hour notices of contributions. Unlike other regularly scheduled reports, these notices are required within 48 hours of the date an authorized committee receives a contribution of $1,000 or more received after the 20th day, but more than 48 hours before, any election.[5] The Commission explained that ''because of the unique nature and timing of [the 48-hour notice] reporting requirement . . . failure to file these 48-hour notices in a timely manner is tantamount to failing to file them at all. Thus, the proposed schedule of penalties [for 48-hour notices of contributions] does not make a distinction between late filers and non-filers for the violations [of 52 U.S.C. 30104(a)(6)].'' [6]

Accordingly, under 11 CFR 111.44, the calculation of fines for committees that fail to file timely 48-hour notices is $178 (base amount) [7] for each untimely notice plus 10% of the amount in violation (dollar amount of the contributions not timely reported). The fine increases by 25% for each time a prior fine was assessed under the AFP during the current and previous two-year election cycles.

The Commission intends to expand the AFP so that its procedures can be extended to additional reporting violations. To maintain the AFP's efficiency and further conserve resources, the Commission intends to limit the expansion to violations that can be quickly and objectively identified and do not involve complex legal issues or factual determinations.

Therefore, the Commission is proposing to expand the AFP to include violations resulting from the failure of persons to file, or to timely file, three types of filings: (1) 24-hour reports of independent expenditures, (2) 48-hour reports of independent expenditures, and (3) 24-hour notices of electioneering communications.

24-hour reports of independent expenditures are required when a ''person'' makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th date, but more than 24 hours, before the date of an election.[8]

48-hour reports of independent expenditures are required when a ''person'' makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th date before the date of an election.[9]

24-hour notices of electioneering communications are required when a ''person'' makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year.[10]

The AFP currently applies only to violations committed by political committees. However, by authorizing the Commission to expand the scope of the AFP to cover reports of independent expenditures and notices of electioneering communications, Congress granted the Commission the authority to cover all ''persons'' required to file such reports and notices. The term ''person'' includes an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of persons.[11] Thus, the proposed rules would broaden the AFP's scope beyond violations committed by political committees.

Currently, violations committed by any person resulting from their failure to file, or to timely file, reports of independent expenditures and notices of electioneering communications are adjudicated through the Commission's traditional enforcement process. The proposed rules would allow the Commission to shift the adjudication of applicable reporting violations from its traditional enforcement process to the AFP. This shift would provide filers with a more efficient and predictable resolution while allowing the Commission to ensure consistent enforcement of similar violations.

III. Proposed Rules

1. Proposed Amendment to 11 CFR 111.35(d)

Current paragraph (d) of § 111.35 provides a list of circumstances that are not considered valid defenses for untimely filing because they are not considered reasonably unforeseen and beyond the control of the respondent. Paragraph (d)(5) provides that a

[2] *See* 52 U.S.C. 30109(4)(C)(iv).

[3] Rulemaking Petition Administrative Fines Program and Commission Forms, 80 FR 16594 (Mar. 30, 2015).

[4] *See* Comments, Reg 2015–01 Administrative Fines and Forms, *https://sers.fec.gov/fosers/*.

[5] 52 U.S.C. 30104(a)(6); 11 CFR 104.5(f).

[6] Administrative Fines, 65 FR 16534, 16537 (Mar. 29, 2000).

[7] As required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified at 28 U.S.C. 2461), the base amount is adjusted annually for inflation.

[8] 52 U.S.C. 30104(g)(1); *see also* 11 CFR 100.16 (defining independent expenditure); 11 CFR 104.4 (reporting requirements for independent expenditures by political committees); 11 CFR 109.10 (reporting requirements for independent expenditures by political committees and other persons).

[9] 52 U.S.C. 30104(g)(2); *see also* 11 CFR 100.16 (defining independent expenditure); 11 CFR 104.4 (Independent expenditures by political committees); 11 CFR 109.10 (How do political committees and other persons report independent expenditures?).

[10] 52 U.S.C. 30104(f); *see also* 11 CFR 100.29 (defining electioneering communication); 11 CFR 104.20 (reporting electioneering communications).

[11] 52 U.S.C. 30101(11); 11 CFR 100.10.

respondent's failure to know the filing dates is not reasonably unforeseeable. The Commission proposes to amend paragraph (d)(5) to include failure to know ''reporting periods, deadlines, and reporting instructions'' as circumstances that would not serve as valid defenses. The Commission is proposing this change because such circumstances are similarly foreseeable and as within the control of the respondent as ''filing dates'' in current paragraph (d)(5). The Commission requests comments on the proposed change.

2. Proposed Amendment to 11 CFR 111.44

Currently, § 111.44 applies only to violations of 48-hour notices of contributions, which is unclear from the title of this section. Because the Commission proposes to expand the AFP to cover untimely filed 48-hour independent expenditure reports, the Commission proposes to amend the heading to § 111.44 by changing ''notices'' to ''notices of contributions.'' This section would continue to apply penalties to untimely filed or non-filed notices of contributions, while new § 111.45, discussed below, would impose new penalties for untimely filed or non-filed 48-hour independent expenditure reports.

3. Proposed new 11 CFR 111.45

The Commission proposes replacing currently reserved § 111.45 with new regulations that would implement administrative fines for untimely filings of 24- and 48-hour reports of independent expenditures and 24-hour notices of electioneering communications.

Paragraphs (a), (b), and (c) propose formulas for calculating civil penalties for violations in timely filing the 24-hour reports of independent expenditures, 48-hour reports of independent expenditures, and 24-hour notices of electioneering communications, respectively, with each paragraph proposing two alternative formulas for calculating penalties for that type of violation. The Commission is not limiting its consideration of formulas to the two alternatives proposed for each of these paragraphs and ultimately may adopt other formulas. Proposed paragraph (d) would add 25% to each civil penalty calculated for each prior violation, where ''prior violation'' would mean a civil penalty assessed against the respondent under the AFP in the current two-year election cycle or the previous two-year election cycle. This would mirror the provision currently in use for 48-hour notices of contributions under § 111.44(a)(2).

The proposed penalty calculation formulas for violations in timely filing reports of independent expenditures and notices of electioneering communications are similar to the penalty calculation formula for 48-hour notices of contributions violations by principal campaign committees under the current AFP. Because the 48-hour notice reporting requirement must be met within 48 hours of the predicate event (the receipt of a covered contribution), the penalty formulas for 48-hour notices of contributions under the current AFP do not distinguish between late or non-filing or between election-sensitive and non-election sensitive reports, unlike formulas for other types of reporting violations covered under 11 CFR 111.43. Similarly, because 24- and 48-hour reports of independent expenditures and 24-hour notices of electioneering communications requirements must be met within 24 or 48 hours of the predicate event (contracting for or making payment for a covered independent expenditure or distribution of a covered electioneering communication), the proposed penalty formulas for these filings also would not distinguish between late or non-filing or between election-sensitive and non-election sensitive reports.

A. Civil Penalty Formulas for violations in timely filing 24- and 48-hour reports of independent expenditures.

Proposed Civil Penalty Formula A—Aligned With Current 11 CFR 111.44

As discussed above, the formula for determining civil penalties for failing to timely file 48-hour notices of contributions received by principal campaign committees is $178 (''base amount'') + (10% × AIV). Proposed Alternatives A under paragraphs (a) and (b) would use the same formula for failing to timely file 24- and 48-hour reports of independent expenditures. Using the same formula that the Commission has applied to similar reporting violations for over 20 years would be consistent with prior Commission administrative fines practice and promote fairness in the application of the law. It would also be easy to administer, minimizing the burden on Commission staff. Are there any reasons that the Commission should not use this formula to calculate civil penalties for violations in timely filing 24- and 48-hour reports of independent expenditures? Are the reports included in the proposed expansion commensurate in amount and election sensitivity?

Proposed Civil Penalty Formula B—Approximating Recent Violation Amounts

Proposed Alternative B under paragraphs (a) and (b) would use the same base amount—$178—but lower multipliers. The formula for 24-hour reports of independent expenditures in paragraph (a) would be $178 + (7.5% × AIV), and the formula for 48-hour reports of independent expenditures in paragraph (b) would be $178 + (5% × AIV).

Alternative B formulas would result in fines similar to those the Commission has approved for these types of violations through its traditional enforcement process. Thus, the formulas under Alternative B would also be consistent with prior Commission practice and promote fairness in the application of the law. Specifically, during the last two two-year election cycles, the Commission approved civil penalties for untimely filed 24-hour reports of independent expenditures at approximately 7.61% of AIV. For 48-hour reports of independent expenditures over the same period, the Commission approved penalties at approximately 6.31% of AIV. The proposed civil penalties under Alternative B would apply this recent historical data as the measure of an appropriate penalty amount. Is this percentage approximation appropriate or should the Commission consider using different percentages as approximation? Should the Commission consider data from a longer time period or other additional data in calculating the average penalty amounts used to determine an appropriate penalty formula?

The Commission notes that Alternative B would use a higher multiplier for untimely filed 24-hour reports of independent expenditures than for 48-hour reports of independent expenditures, which would result in higher penalties being assessed for 24-hour reports than 48-hour reports. In the Commission's view, this would be appropriate because 24-hour reports of independent expenditures are due closer to the date of the election and therefore failure to timely file those reports has a more significant electoral impact. This would be consistent with the final civil penalties the Commission has historically approved through its enforcement of similar violations. Should the Commission instead use the same multiplier for both 24- and 48-hour reports of independent expenditures and, if so, why?

Of the two proposed alternative formulas, which one would be most appropriate to determine civil penalties for violations of timely filing these reports of independent expenditures, and why? Should the Commission consider any other formulas? Does the inherently time-sensitive nature of independent expenditure reports warrant a higher penalty formula than the Commission has historically applied in AFP matters?

B. Civil Penalty Formulas for violations in timely filing 24-hour notices of electioneering communications.

Each alternative in proposed paragraph (c) of § 111.45 would provide a formula for calculating civil penalties for violations for failure to timely file 24-hour notices of electioneering communications. The Commission proposes the same two alternative formulas for 24-hour notices of electioneering communications as for 24-hour reports of independent expenditures.

Civil Penalty Formula Alternative A—Aligned With Current 11 CFR 111.44

As with both 24- and 48-hour reports of independent expenditures, and for the same reasons, the Commission proposes in Alternative A: $178 + (10% × AIV) to align with the current formula used in 11 CFR 111.44.

Civil Penalty Formula Alternative B—Aligned With Proposed Alternative B for 24-Hour Reports of Independent Expenditures.

Proposed Alternative B for 24-hour notices of electioneering communications is the same as the proposed Alternative B for 24-hour reports of independent expenditures, discussed above: ($178 + (7.5% × AIV)).[12] In the Commission's view, this is appropriate because both reports are due within 24-hours of the predicate event and relatively close to the election date, which makes them similarly election sensitive.

Should the Commission instead apply a different formula for 24-hour notices of electioneering communications than 24-hour reports of independent expenditures? For instance, does the fact that 24-hour notices of electioneering communications and 24-hour reports of independent expenditures have slight differences in time period and more significant differences in amount threshold justify applying a different penalty formula and, if so, what would the appropriate formula be? The Commission notes that the requirement to file 24-hour notices of electioneering communications is triggered on the disclosure date of an electioneering communication, which, by definition, would fall within 30 days of a primary or 60 days of a general election, when the person making the electioneering communication has spent or contracted to spend more than $10,000 within the calendar year on the communication. In contrast, the requirement to file a 24-hour report of independent expenditures is triggered when the person making the independent expenditure has publicly distributed/disseminated or contracted to make an independent expenditure that costs $1,000 or more after the 20th day, but more than 24 hours before an election. Are these differences sufficient to justify using a different formula and, if so, what would be the appropriate formula?

For proposed formulas under Alternative B in paragraphs (a), (b), and (c), the Commission would set the multiplier based on the actual civil penalty amounts that the Commission negotiated with respondents for violations of timely filing 24- and 48-hour reports of independent expenditures via the traditional enforcement from July 1, 2020 through December 31, 2023. Would this provide an appropriate base for comparison? If not, how many years' data should the Commission use?

C. Proposed increase in civil penalty for each previous violation.

Proposed paragraph (d) of § 111.45(d) would apply to penalties calculated under paragraphs (a), (b), and (c), and would include a 25% increase in civil penalty for each previous violation, in parity with current 11 CFR 111.44.

The penalty formula for untimely 48-hour notices of contributions under 11 CFR 111.44 adds 25% to each civil penalty for each prior violation. Under § 111.44, ''prior violation'' means ''a final civil money penalty that has been assessed against the respondent under'' the same section of the rule ''in the current two-year election cycle or the prior two-year election cycle.'' [13] The Commission is proposing to include this same requirement in proposed § 111.45(d) regarding the civil penalties for violations in timely filing the reports covered by this proposed expansion. The Commission seeks comments on this proposal.

D. Calculating civil penalties for each report vs. calculating civil penalties for multiple reports as one violation.

In addition to using formulas to calculate civil penalties for violations in proposed 11 CFR 111.45(a), (b), and (c), the Commission is considering whether to treat each report the respondent has failed to timely file as a separate violation, or whether all reports that the respondent has failed to timely file within a certain time period should be treated as a single violation.

For example, under Alternative A (10% multiplier), if Person A makes independent expenditures of $1,000 eighteen days before the election, and $3,000 fifteen days before the election, triggering the 24-hour reporting requirement for each independent expenditure but filing no reports, should the penalties be calculated for each report that was required to be filed: $178 + $178 + (.10 × $4,000) =$756? Or should the Commission instead treat this as one violation: $178 + (.10 × $4,000) = $578?

Treating multiple reports the respondent has failed to timely file as a single violation would be easier to administer, but it may unfairly treat such filers the same as those who failed to timely file one report. For example, it would treat Filer A, who made two independent expenditures in the 18 days before an election, the same as Filer B, who made one independent expenditure 12 days before the election. If the Commission were to take the single violation approach, should it adjust the formula to account for the more significant violation of Filer A vis-à-vis Filer B?

E. Other considerations

Finally, should the Commission consider different enhancements or reductions in the civil penalty formula? For example, should the Commission consider whether the person failing to timely file is a political committee, a small organization, or an individual?

III. Proposed Conforming Amendments

A. Adding Statutory Citations of Reports Proposed for the Expanded AFP

To accommodate the expansion, the Commission is proposing to make a technical and conforming amendment in 11 CFR 111.30, 111.31, 111.32, 111.37, and 111.40 by adding cites to paragraphs (f) and (g) of 52 U.S.C. 30104, as appropriate, to each instance of the cite covering the reports currently included in the Administrative Fines Program.

[12] Unlike with 24-hour reports of independent expenditures, the Commission does not have a body of data for violations in timely filing 24-hour notices of electioneering communications from the recent past on which to propose a formula.

[13] 11 CFR 111.44(b).

B. Conforming Amendments To Clarify That the Proposed Expansion of AFP Would Apply Not Only to Political Committees But to Any Person Failing To Timely File Reports Subject to the AFP

Under the proposed expansion of AFP, 24- and 48-hour reports of independent expenditures and 24-hour notices of electioneering communications must be filed by any ''person'' who meets the filing requirements as discussed in section II of this document.

To accommodate the proposed expansion of the AFP from reporting violations committed only by political committees to violations committed by persons filing the reports included in the proposed expansion, the Commission proposes in 11 CFR 111.30 to replace the phrase, ''political committees and their treasurers'' with ''any person.'' Additionally, the Commission proposes to replace the word ''committee'' with ''respondent'' in 11 CFR 111.35(b)(2) and throughout paragraph (d) of that section.

Current § 111.46 requires that if a respondent has not filed a designation of counsel, all notifications and other communications to a respondent as part of the AFP will be sent to the committee at the address on file with the Commission from the committee's most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

The Commission proposes to make conforming edits to the second sentence of § 111.46 to state that all notifications and communications will be sent the respondent, and if the respondent is a political committee, communications will be sent to the political committee and its treasurer at the political committee's address as listed in the most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

C. Further Conforming Amendments Not Required by the Proposed AFP Expansion

The Commission proposes to make two further conforming amending in 11 CFR 111.30 and 111.37, addressed above that do not relate to the proposed AFP expansion.

In 11 CFR 111.30, the Commission proposes two changes to update the regulation by removing outdated information. First, the Commission proposes removing the beginning and statutory end date of the AFP in the first sentence. Further, the Commission proposes removing the last sentence announcing a gap in the applicability of the AFP for reports relating to reporting periods that ended between January 1, and January 21, 2014.[14] This information is now outdated, and the statute of limitations has expired on any violations for that time period.

In 11 CFR 111.37(a), the Commission proposes to add ''determines'' before ''the amount of the civil money penalty'' to conform the language of this provision with the language used in § 111.40(a). Each of these sections require a Commission determination as to the amount of the civil penalty before further Commission action, albeit under differing circumstances.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed rules do not create any new recordkeeping, reporting, or financial obligations. Any small entities that would be subject to the proposed rules are already liable for civil penalties if they violate the applicable reporting requirements. These violations are currently adjudicated through the traditional enforcement process. The proposed rules will allow the Commission to shift the adjudication of applicable reporting violations from its traditional enforcement process to the more efficient AFP.

The proposed rules would result in published penalty schedules for the applicable reporting violations, providing clarity and certainty to respondents navigating the compliance process. The AFP's streamlined process and clear penalty schedules make it less likely that a small entity would need to hire additional staff or retain professional services to address and remedy reporting violations.

Moreover, the penalty formulas that the Commission is considering will take into account the amount of the disbursements or expenditures that were not timely reported. Thus, civil penalties will be scaled so that respondents who spend less on disbursements for electioneering communications or independent expenditures will be subject to lower fines.

Therefore, the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For reasons set out in the preamble, the Federal Election Commission proposes to amend 11 CFR part 111 as follows:

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 is revised to read as follows:

Authority: 2 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note.

■ 2. Revise § 111.30 to read as follows:

§ 111.30 When will this subpart apply?

This subpart applies to violations of the reporting requirements of 52 U.S.C. 30104(a), (f), and (g).

■ 3. Amend § 111.31 by revising paragraph (b) to read as follows:

§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 52 U.S.C. 30104(a)?

* * * * *

(b) This subpart will apply to compliance matters resulting from a complaint filed pursuant to §§ 111.4 through 111.7 if the complaint alleges a violation of 52 U.S.C. 30104(a), (f), or (g). If the complaint alleges violations of any other provision of any statute or regulation over which the Commission has jurisdiction, subpart A of this part will apply to the alleged violations of these other provisions.

■ 4. Amend § 111.32 by revising the introductory text and paragraph (d) to read as follows:

§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 52 U.S.C. 30104(a), (f), or (g), the Chairman or Vice-Chairman shall notify such respondent of the Commission's finding. The written notification shall set forth the following:

* * * * *

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in § 111.43, § 111.44, or § 111.45; and

* * * * *

■ 5. Amend § 111.35 by revising paragraphs (b)(1) and (d)(2), (3), (5), and (6) to read as follows:

[14] *See* Extension of Administrative Fines Program, Final Rule, 79 FR 3302 (Jan. 21, 2014).

§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

* * * * *

(b) * * *

(1) The Commission's reason to believe finding is based on a factual error including, but not limited to, the respondent was not required to file the report, or the respondent timely filed the report in accordance with 11 CFR 100.19;

* * * * *

(d) * * *

(2) Delays caused by respondent's vendors or contractors;

(3) Illness, inexperience, or unavailability of the respondent or respondent's treasurer or other staff;

* * * * *

(5) A respondent's failure to know filing requirements, including reporting periods, deadlines, and reporting instructions; and

(6) A respondent's failure to use filing software properly.

* * * * *

■ 6. Amend § 111.37 by revising paragraph (a) to read as follows:

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 52 U.S.C. 30104(a), (f), or (g) and determines the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent in writing of its final determination.

* * * * *

■ 7. Amend § 111.40 by revising paragraph (a) to read as follows:

§ 111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 52 U.S.C. 30104(a), (f), or (g), and determines the amount of the civil money penalty, the respondent shall be notified in writing of its final determination.

* * * * *

■ 8. Amend § 111.44 by revising the section heading to read as follows:

§ 111.44 What is the schedule of penalties for the 48-hour notices of contributions not filed or are filed late?

* * * * *

■ 9. Add § 111.45 to read as follows:

§ 111.45 What is the schedule of penalties for 24- and 48-hour reports of independent expenditures and for 24-hour notices of electioneering communications not filed or filed late?

Alternative A to Paragraph (a)

(a) *24-hour reports of independent expenditures.* If the respondent fails to file timely a 24-hour report of independent expenditures as required under 52 U.S.C. 30104(g)(1), (3), and (4), the civil money penalty will be calculated as follows: Civil money penalty = $178 + (.10 × amount of expenditures not timely reported).

Alternative B to Paragraph (a)

(a) *24-hour reports of independent expenditures.* If the respondent fails to file timely a 24-hour report of independent expenditures as required under 52 U.S.C. 30104(g)(1), (3), and (4), the civil money penalty will be calculated as follows: Civil money penalty = $178 + (.075 × amount of expenditures not timely reported).

Alternative A to Paragraph (b)

(b) *48-hour reports of independent expenditures.* If the respondent fails to file timely a 48-hour report of independent expenditures as required under 52 U.S.C. 30104(g)(2), (3), and (4) the civil money penalty will be calculated as follows: Civil money penalty = $178 + (.10 × amount of expenditures not timely reported).

Alternative B to Paragraph (b)

(b) *48-hour reports of independent expenditures.* If the respondent fails to file timely a 48-hour report of independent expenditures as required under 52 U.S.C. 30104(g)(2), (3), and (4), the civil money penalty will be calculated as follows: Civil money penalty = $178 + (.05 × amount of expenditures not timely reported).

Alternative A to Paragraph (c)

(c) *24-hour notices of electioneering communications.* If the respondent fails to file timely a 24-hour notice of electioneering communications as required under 52 U.S.C. 30104(f), the civil money penalty will be calculated as follows: Civil money penalty = $178 + (.10 × amount of expenditures not timely reported).

Alternative B to Paragraph (c)

(c) *24-hour notices of electioneering communications.* If the respondent fails to file timely a 24-hour notice of electioneering communications as required under 52 U.S.C. 30104(f), the civil money penalty will be calculated as follows: Civil money penalty = $178 + (.075 × amount of expenditures not timely reported).

(d) *Increase in civil money penalties for prior violations.* The civil money penalties calculated in paragraphs (a), (b), and (c) of this section shall be increased by twenty five percent (25%) for each prior violation. For purposes of this section, *prior violation* means a final civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

■ 10. Revise § 111.46 to read as follows:

§ 111.46 How will the respondent be notified of actions taken by the Commission and the reviewing officer?

If a statement designating counsel has been filed in accordance with § 111.23, all notifications and other communications to a respondent provided for in this subpart will be sent to designated counsel. If a statement designating counsel has not been filed, all notifications and other communications to a respondent provided for in this subpart will be sent to respondent. If the respondent is a political committee, communications will be sent to the political committee and its treasurer at the political committee's address as listed in the most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

Dated: July 25, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–16841 Filed 7–31–24; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket ID OCC–2023–0016]

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. OP–1828]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

RIN 3064–ZA39

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Regulatory review; request for comments.

SUMMARY: Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the OCC, Board, and FDIC (collectively, the agencies) are reviewing agency regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies. Over approximately two years, the agencies will publish four **Federal Register** documents requesting comment on multiple categories of regulations. This second **Federal Register** document requests comment on regulations in the categories of Consumer Protection; Directors, Officers, and Employees; and Money Laundering.

DATES: Written comments must be received no later than October 30, 2024.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov:*

Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2023–0016'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2023–0016'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website 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.

You may review comments and other related materials that pertain to this action by the following method:

• *Viewing Comments Electronically—Regulations.gov:*

Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2023–0016'' in the Search Box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. OP–1828 by any of the following methods:

• *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.

• *Fax:* 202–452–3819 or 202–452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Public Inspection: In general, all public comments will be made available on the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: The FDIC encourages interested parties to submit written comments. Please include your name, affiliation, address, email address, and telephone number(s) in your comment. You may submit comments to the FDIC, identified by ''EGRPRA'' in the subject line of your message by any of the following methods:

• *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the FDIC's website.

• *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments/Legal OES (EGRPRA), Federal Deposit Insurance Corporation,

550 17th Street NW, Washington, DC 20429.

• *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street NW) on business days between 7 a.m. and 5 p.m. ET.

• *Email: comments@FDIC.gov.* Include ''EGRPRA'' in the subject line of the message.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Allison Hester-Haddad, Special Counsel, Daniel Amodeo, Counsel, or John Cooper, Counsel, Chief Counsel's Office (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Katie Ballintine, Assistant Director, (202) 452–2555, Maria Jovanovic, Senior Financial Institution Policy Analyst II, (202) 475–6327, and Colton Hamming, Financial Institution Policy Analyst II, (202) 452–3932, Division of Supervision and Regulation; Mandie Aubrey, Senior Counsel, (202) 452–2595, Division of Consumer and Community Affairs; Dafina Stewart, Deputy Associate General Counsel, (202) 452–2677, David Cohen, Senior Attorney, (202) 452–5259, and Vivien Lee, Attorney, (202) 452–2029, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Karen J. Currie, Chief, Policy & Program Development Section, (202) 898–3981, Division of Risk Management Supervision; or William Piervincenzi, Supervisory Counsel, (202) 898–6957, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 2222 of EGRPRA [1] requires that not less frequently than once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) [2] and the agencies [3] conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In conducting this review, the FFIEC or the agencies will (a) categorize their regulations by type and (b) at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome.[4]

EGRPRA also requires the FFIEC or the agencies to publish in the **Federal Register** a summary of the comments received, identifying significant issues raised and commenting on those issues. It also directs the agencies to eliminate unnecessary regulations, as appropriate. Finally, the statute requires the FFIEC to submit to Congress a report that summarizes any significant issues raised in the public comments and the relative merits of those issues. The report also must include an analysis of whether the agencies are able to address the regulatory burdens associated with such issues or whether those burdens must be addressed by legislative action.

II. The EGRPRA Review's Targeted Focus

The EGRPRA regulatory review provides an opportunity for the public and the agencies to evaluate groups of related regulations and to identify opportunities for burden reduction.[5] For example, the EGRPRA review may facilitate the identification of statutes and regulations that share similar goals or complementary methods where one or more agencies could eliminate the overlapping regulatory requirements. Alternatively, commenters may identify regulations or statutes that impose requirements that are no longer consistent with current business practices and may warrant revision or elimination.

The EGRPRA review also provides the agencies and the public with an opportunity to consider how to reduce the impact on community banks or their holding companies. The agencies are aware of the role that these institutions play in providing consumers and businesses across the nation with essential financial services and access to credit. The agencies are especially concerned about the impact of requirements on these smaller institutions. The agencies understand that when a new regulation is issued or a current regulation amended, smaller institutions may have to devote a significant amount of their resources to determine if and how the regulation will affect them. Through the public comment process, the EGRPRA review can help the agencies identify and target regulatory changes to reduce impacts on those smaller institutions.

Burden reduction must be compatible with consumer protection and the safety and soundness of insured depository institutions, their affiliates, and the financial system as a whole. Burden reduction also must be consistent with the agencies' statutory mandates, many of which require the issuance of regulations. EGRPRA recognizes that effective burden reduction may require statutory changes. Accordingly, as part of this review, we specifically ask the public to comment on the relationship among burden reduction, regulatory

[1] 12 U.S.C. 3311.

[2] The FFIEC is an interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions and to make recommendations to promote uniformity in the supervision of financial institutions. The FFIEC does not issue regulations that impose burden on financial institutions and, therefore, we have not separately captioned the FFIEC in this document.

[3] The FFIEC is comprised of the OCC, Board, FDIC, National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB), and State Liaison Committee. Of these, only the OCC, Board, and FDIC are statutorily required to undertake the EGRPRA review. The NCUA elected to participate in the first and second EGRPRA reviews, and the NCUA Board again has elected to participate in this review process.

Consistent with its approach during the first and second EGRPRA reviews, NCUA will separately issue documents and requests for comment on its rules. The CFPB is required to review its significant rules and publish a report of its review no later than five years after they take effect. *See* 12 U.S.C. 5512(d). This process is separate from the EGRPRA process.

[4] Insured depository institutions are also subject to regulations that are not reviewed under the EGRPRA process because they were not prescribed by the agencies. Examples include rules for which rulemaking authority was transferred to the CFPB and anti-money laundering regulations issued by the Department of the Treasury's Financial Crimes Enforcement Network, among others. If, during the EGRPRA process, the agencies receive a comment about a regulation that is not subject to the EGRPRA review, we will forward that comment to the appropriate agency.

[5] See supra note 1.

requirements, policy objectives, and statutory mandates. We also seek quantitative data about the impact of rules.

We note that the agencies must consider regulatory burden each time an agency proposes, adopts, or amends a rule. For example, under the Paperwork Reduction Act of 1995 [6] and the Regulatory Flexibility Act,[7] the agencies assess each rulemaking with respect to the burdens the rule might impose. The agencies also invite the public to comment on proposed rules as required by the Administrative Procedure Act.[8]

III. The EGRPRA Review Process

Taken together for purposes of the EGRPRA review process, the agencies' regulations covering insured depository institutions encompass more than 100 subjects.[9] Consistent with the EGRPRA statute and past practice, the agencies have grouped these regulations into the following 12 categories listed in alphabetical order: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; [10] Directors, Officers, and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. These categories were used during the prior EGRPRA reviews. The agencies determined the categories by sorting the regulations by type and sought to have no category be too large or broad. These categories remain useful, and the agencies have not modified the categories for purposes of this review.

To carry out the EGRPRA review, the agencies plan to publish four **Federal Register** documents with each addressing one or more categories of rules. Each **Federal Register** document will have a 90-day comment period. On February 6, 2024, the agencies published the first document addressing the following categories of regulations: Applications and Reporting; Powers and Activities; and International Operations.[11] This second document addresses Consumer Protection; Directors, Officers, and Employees; and Money Laundering. The agencies invite the public to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on insured depository institutions and their holding companies in these three categories.

To assist the public's understanding of how the agencies have organized the EGRPRA review, the agencies have prepared a chart that lists the categories of regulations for which we are requesting comments. The chart's left column divides the categories into specific subject-matter areas. The headings at the top of the chart identify the types of institutions affected by the regulations.

The agencies will review the comments received and determine whether further action is appropriate with respect to the regulations. The agencies will consult and coordinate with each other and expect generally to make this determination jointly, as appropriate, in the case of rules that have been issued on an interagency basis. Similarly, as appropriate, the agencies will undertake any rulemaking to amend or repeal those rules on an interagency basis. For rules issued by a single agency, the issuing agency will review the comments received and independently determine whether amendments to or repeal of its rules are appropriate.

Further, as part of the EGRPRA review, the agencies are holding a series of public outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested parties to present their views directly to senior management and staff of the agencies. More information about the outreach meetings can be found on the agencies' EGRPRA website, *http://egrpra.ffiec.gov.*

IV. Request for Comments on Regulations in the Consumer Protection; Directors, Officers, and Employees; and Money Laundering Categories

The agencies are requesting comment on regulations in the Consumer Protection; Directors, Officers, and Employees; and Money Laundering categories to identify outdated, unnecessary, or unduly burdensome requirements imposed on insured depository institutions and their holding companies. The agencies recognize that there are proposed rules concerning some of these categories open as of the date of this document and will solicit comment on all rules finalized by the agencies before the publication of the last EGRPRA document in the series. In addition to comments on regulations in these categories generally, the agencies are requesting comments on certain specific regulations described below within these categories issued since the last EGRPRA review. Where possible, the agencies ask commenters to cite to specific regulatory language or provisions. The agencies also welcome suggested alternative provisions or language in support of a comment, where appropriate. The agencies will consider comments submitted anonymously.

Specific Issues for Commenters To Consider

The agencies specifically invite comment on the following issues as they pertain to the agencies' Consumer Protection; Directors, Officers, and Employees; and Money Laundering rules addressed in this document. The agencies have included two additional questions in the cumulative effects category since the issuance of the first EGRPRA **Federal Register** document. We will ask these same questions for each subsequent document we issue in connection with the EGRPRA process and invite comments on these additional questions for the categories in the first document.

- *Need and purpose of the regulations.*
  - *Question 1:* Have there been changes in the financial services industry, consumer behavior, or other circumstances that cause any regulations in these categories to be outdated, unnecessary, or unduly burdensome? If so, please identify the regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.
  - *Question 2:* Do any of these regulations impose burdens not required by their underlying statutes? If so, please identify the regulations and indicate how they should be amended.
- *Overarching approaches/flexibilities.*
  - *Question 3:* With respect to the regulations in these categories, could an agency use a different regulatory approach to lessen the burden imposed by the regulations and achieve statutory intent?
  - *Question 4:* Do any of these rules impose unnecessarily inflexible requirements? If so, please identify the regulations and indicate how they should be amended.
- *Cumulative effects.*
  - *Question 5:* Looking at the regulations in a category as a whole, are there any requirements that are

[6] 44 U.S.C. 3501–3521.

[7] 5 U.S.C. 610.

[8] 5 U.S.C. 551–559.

[9] Consistent with EGRPRA's focus on reducing burden on insured depository institutions, the agencies have not included their internal, organizational, or operational regulations in this review. These regulations impose minimal, if any, burden on insured depository institutions.

[10] The agencies are seeking comment only on consumer protection regulations for which they retain rulemaking authority for insured depository institutions and holding companies under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act).

[11] 89 FR 8084 (Feb. 6, 2024).

redundant, inconsistent, or overlapping in such a way that taken together, impose an unnecessary burden that could potentially be addressed? If so, please identify those regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

○ *Question 6:* Have the agencies issued similar regulations in the same area that should be considered together as bodies of regulation, when assessing the cumulative effects on an insured depository institution or holding company? If so, please identify the regulations, why they should be considered together, and any available analyses or data for the agencies' consideration.

○ *Question 7:* Could any regulations or category of regulation be streamlined or simplified to reduce unduly burdensome or duplicative regulatory requirements?

• *Effect on competition.*

○ *Question 8:* Do any of the regulations in these categories create competitive disadvantages for one part of the financial services industry compared to another or for one type of insured depository institution compared to another? If so, please identify the regulations and indicate how they should be amended.

• *Reporting, recordkeeping, and disclosure requirements.*

○ *Question 9:* Do any of the regulations in these categories impose outdated, unnecessary, or unduly burdensome reporting, recordkeeping, or disclosure requirements on insured depository institutions or their holding companies?

○ *Question 10:* Could an insured depository institution or its holding company fulfill any of these requirements through new technologies (if they are not already permitted to do so) and experience a burden reduction? If so, please identify the regulations and indicate how they should be amended.

• *Unique characteristics of a type of institution.*

○ *Question 11:* Do any of the regulations in these categories impose requirements that are unwarranted by the unique characteristics of a particular type of insured depository institution or holding company? If so, please identify the regulations and indicate how they should be amended.

• *Clarity.*

○ *Question 12:* Are the regulations in these categories clear and easy to understand?

○ *Question 13:* Are there specific regulations for which clarification is needed? If so, please identify the regulations and indicate how they should be amended.

• *Impact to community banks and other small, insured depository institutions.*

○ *Question 14:* Are there regulations in these categories that impose outdated, unnecessary, or unduly burdensome requirements on a substantial number of community banks, their holding companies, or other small, insured depository institutions or holding companies?

○ *Question 15:* Have the agencies issued regulations pursuant to a common statute that, as applied by the agencies, create redundancies or impose inconsistent requirements?

○ *Question 16:* Should any of these regulations issued pursuant to a common statute be amended or repealed to minimize this impact? If so, please identify the regulations and indicate how they should be amended.

○ *Question 17:* Have the effects of any regulations in these categories changed over time that now have a significant economic impact on a substantial number of small, insured depository institutions or holding companies? If so, please identify the regulations and indicate how they should be amended. The agencies seek information on (1) the continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (4) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

• *Scope of rules.*

○ *Question 18:* Is the scope of each rule in these categories consistent with the intent of the underlying statute(s)?

○ *Questions 19:* Could the agencies amend the scope of a rule to clarify its applicability or reduce the burden, while remaining faithful to statutory intent? If so, please identify the regulations and indicate how they should be amended.

Specific Interagency Regulations Issued Since the Last EGRPRA Review

• *Loans in Areas Having Special Flood Hazards:* The OCC, Board, FDIC, Farm Credit Administration, and NCUA amended their regulations regarding loans in areas having special flood hazards to implement the private flood insurance provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).[12] Specifically, the final rule requires regulated lending institutions to accept flood insurance policies that meet the statutory definition of ''private flood insurance'' in the Biggert-Waters Act and permits regulated lending institutions to exercise their discretion to accept flood insurance policies issued by private insurers and plans providing flood coverage issued by mutual aid societies that do not meet the statutory definition of ''private flood insurance,'' subject to certain restrictions.

• *Thresholds Increase for the Major Assets Prohibition of the Depository Institution Management Interlocks Act Rules:* The OCC, Board, and FDIC amended their regulations to increase the thresholds in the major assets prohibition for management interlocks for purposes of the Depository Institution Management Interlocks Act (DIMIA). The DIMIA major assets prohibition prohibits a management official of a depository organization with assets above a certain asset threshold (or any affiliate of such an organization) from serving at the same time as a management official of an unaffiliated depository organization with assets above a certain asset threshold (or any affiliate of such an organization). The final rule increased both major assets prohibition thresholds to $10 billion to account for changes in the United States banking market since the current thresholds were established in 1996.[13]

Specific OCC Regulations Issued Since the Last EGRPRA Review

• *Integration of National Bank and Savings Association Regulations:* The OCC integrated certain rules originally issued by the OCC with respect to national banks and by the former Office of Thrift Supervision (OTS) with respect to savings associations.[14] The OCC integrated rules relating to consumer protection in insurance sales, management interlocks, appraisals, and the Fair Credit Reporting Act (FCRA). This rulemaking also made technical amendments to the OCC's FCRA rule to conform to provisions of the Dodd-Frank Act.

• *Charging Interest by National Banks at Rates Permitted Competing Institutions; Charging Interest to Corporate Borrowers:* The OCC issued a rule to clarify and reaffirm that a bank may transfer a loan without affecting the permissible interest term.[15]

• *Suspicious Activity Reports (SARs).* In March 2022, the OCC issued a rule to allow the OCC to issue exemptions from the requirements of the OCC's SAR

[12] 84 FR 4953 (Feb. 20, 2019).

[13] 84 FR 54465 (Oct. 10, 2019).

[14] 79 FR 28393 (May 16, 2014).

[15] 85 FR 33530 (Jun. 2, 2020).

regulations based on a request from an institution, subject to certain criteria.[16]

Specific FDIC Regulations Issued Since the Last EGRPRA Review

- *FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo:* The FDIC amended its regulations governing use of the official FDIC sign and insured depository institutions' advertising statements to reflect how depositors conduct business with insured depository institutions today, including through digital and mobile channels.[17] The final rule also clarified the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are conducting business with an insured depository institution and whether their funds are protected by Federal deposit insurance.
- *False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo:* The FDIC adopted a final rule to implement section 18(a)(4) of the Federal Deposit Insurance Act (FDI Act).[18] The final rule established the process by which the FDIC will identify and investigate conduct that may violate section 18(a)(4) of the FDI Act, the standards under which such conduct will be evaluated, and the procedures that the FDIC will follow when formally and informally enforcing the provisions of section 18(a)(4) of the FDI Act.
- *Simplification of Deposit Insurance Rules:* The FDIC amended its regulations governing deposit insurance coverage.[19] The amendments simplified the deposit insurance regulations by establishing a ''trust accounts'' category that governs coverage of deposits of both revocable trusts and irrevocable trusts using a common calculation, and the amendments provided consistent deposit insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender.
- *Joint Ownership Deposit Accounts:* The FDIC amended its deposit insurance regulations to update one of the requirements that must be satisfied for an account to be separately insured as a joint account.[20] Specifically, the final rule provides an alternative method to satisfy the signature card requirement. Under the final rule, the signature card requirement may be satisfied by information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.
- *Federal Interest Rate Authority:* FDIC issued regulations clarifying the law that governs the interest rates State-chartered banks and insured branches of foreign banks (collectively, State banks) may charge.[21] These regulations provided that State banks are authorized to charge interest at the rate permitted by the State in which the State bank is located, or one percent in excess of the 90-day commercial paper rate, whichever is greater. The regulations also provided that whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined at the time the loan is made, and interest on a loan permissible under section 27 is not affected by a change in State law, a change in the relevant commercial paper rate, or the sale, assignment, or other transfer of the loan.

V. The Agencies' Review of Regulations Under Section 610 of the Regulatory Flexibility Act (RFA)

Consistent with past practice, the agencies will use the EGRPRA review to satisfy their respective obligations under section 610 of the RFA.[22] To that end, for each rule that has a significant impact on a substantial number of small entities issued in the last 10 years, the agencies invite comment on (1) the continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (4) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. The purpose of the review will be to determine whether such rules should be continued without change, amended, or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.

The agencies have not identified any rules pertaining to Consumer Protection; Directors, Officers, and Employees; and Money Laundering that would have a significant impact on a substantial number of small entities. The agencies will consider public comments submitted through the EGRPRA review process and agency experience to identify regulations where the agencies can reduce burdens that have a significant impact on a substantial number of small insured depository institutions.[23]

[16] 87 FR 15323 (Mar. 18, 2022).

[17] 89 FR 3504 (Jan. 18, 2024).

[18] 87 FR 33415 (Jun. 2, 2022).

[19] 87 FR 4455 (Jan. 28, 2022).

[20] 84 FR 35022 (Jul. 22, 2019).

[21] 85 FR 44146 (Jul. 22, 2020).

[22] Section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610, imposes a continuing obligation on the agencies to review regulations that may have a significant economic impact upon a substantial number of small entities within 10 years after a final rule is published. A subset of the rules the agencies will review under EGRPRA will also be reviewed under the section 610 review criteria. The agencies will indicate which rules are subject to section 610 review. The factors the agencies consider in evaluating a rule under 5 U.S.C. 610 are (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

[23] The review will be consistent with the requirements of a Regulatory Flexibility Act, section 610 review. The agencies will determine whether particular rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of small insured depository institutions.

CATEGORIES AND REGULATIONS ADDRESSED IN THE SECOND FEDERAL REGISTER NOTICE

Subject	National banks	State member banks	State non-member banks	Federal savings associations	State savings associations	BHCs & FHCs --- SLHCs
Consumer Protection [1]—						
Interagency Regulations						
Consumer Protection in Sales of Insurance.	12 CFR part 14.	12 CFR part 208, subpart H [Reg. H].	12 CFR part 343.	12 CFR part 14.	12 CFR part 343.	
Fair Housing	12 CFR part 27.	.....	12 CFR part 338.	12 CFR part 128 (including other non-discrimination requirements).	12 CFR part 338.	
Loans in Identified Flood Hazard Areas.	12 CFR part 22.	12 CFR 208.25 [Reg. H].	12 CFR part 339.	12 CFR part 22.	12 CFR part 339.	
Prohibition Against Use of Interstate Branches Primarily for Deposit Production.	12 CFR part 25, subpart E.	12 CFR part 208.7 [Reg. H].	12 CFR part 369.			
Information Security Standards	12 CFR part 30, Appx. B.	12 CFR part 208, Appx. D–2 [Reg. H].	12 CFR part 364, Appx. B.	12 CFR part 30, Appx. B.	12 CFR part 364, Appx. B	12 CFR part 225, Appx. F [Reg. Y]. ---
Fair Credit Reporting Act Duties of Users of Consumer Reports Regarding Address Discrepancies and Records Disposal.	12 CFR part 41, subpart I.	12 CFR part 222, subpart I [Reg V].	12 CFR part 334, subpart I.	12 CFR part 41, subpart I.	12 CFR part 334, subpart I.	
Fair Credit Reporting Act Consumer Information Identity Theft Red Flags.	12 CFR part 41, subpart J.	12 CFR part 222 subpart J [Reg V].	12 CFR part 334, subpart J.	12 CFR part 41, subpart J.	12 CFR part 334, subpart J.	
OCC Regulations						
Federal Savings Association Advertising.	.....	.....	.....	12 CFR 163.27.		
Federal Savings Association Tying Restriction Exception.	.....	.....	.....	12 CFR 163.36.		
Residential Mortgage Lending Practices.	12 CFR part 30, appx. C.	.....	.....	12 CFR part 30, appx. C.		
FDIC Regulations						
Advertisement of Membership	12 CFR part 328.	12 CFR part 328.	12 CFR part 328.	12 CFR part 328.	12 CFR part 328.	
Deposit Insurance Coverage	12 CFR part 330.	12 CFR part 330.	12 CFR part 330.	12 CFR part 330.	12 CFR part 330.	
Certification of Assumption of Deposits and Notification of Changes of Insured Status.	12 CFR part 307.	12 CFR part 307.	12 CFR part 307.	12 CFR part 307.	12 CFR part 307.	
Federal Interest Rate Authority	.....	12 CFR part 331.	12 CFR part 331.			
Directors, Officers, and Employees						
Interagency Regulations						
Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements.	12 CFR part 31.	12 CFR part 215 [Reg. O].	12 CFR 337.3	12 CFR part 31.	12 CFR 337.3.	
Management Official Interlocks	12 CFR part 26.	12 CFR part 212 [Reg. L].	12 CFR part 348.	12 CFR part 26.	12 CFR part 348	12 CFR part 212 [Reg. L]. --- 12 CFR part 238, subpart J [Reg LL].
OCC Regulations						
National Bank Activities and Operations.	12 CFR part 7, subparts B and C.					
Federal Savings Association Operations.	.....	.....	.....	12 CFR part 163.		
Federal Savings Association Restrictions on Transactions with Officers, Directors, and Others.	.....	.....	.....	12 CFR part 31; 12 CFR 160.130.		

CATEGORIES AND REGULATIONS ADDRESSED IN THE SECOND FEDERAL REGISTER NOTICE—Continued

Subject	National banks	State member banks	State non-member banks	Federal savings associations	State savings associations	BHCs & FHCs --- SLHCs
FDIC Regulations						
Golden Parachute and Indemnification Payments.	12 CFR part 359.	12 CFR part 359.	12 CFR part 359.	12 CFR part 359.	12 CFR part 359	12 CFR part 359. --- 12 CFR part 359.
Money Laundering						
Interagency Regulations						
Bank Secrecy Act Compliance	12 CFR part 21, subpart C.	12 CFR 208.63 [Reg. H].	12 CFR part 326, subpart B.	12 CFR part 21, subpart C.	12 CFR part 326, subpart B.	
Reports of Crimes or Suspected Crimes.	12 CFR part 21, subpart B.	12 CFR 208.62 and 208.63 [Reg. H].	12 CFR part 353.	12 CFR 163.180(d).	12 CFR part 353	12 CFR 225.4(f) [Reg. Y].

[1] Regulations for which rulemaking authority has transferred to the CFPB are not included in this Consumer Protection category. As described in the **SUPPLEMENTARY INFORMATION** section of this document, the CFPB is required to review its significant rules and publish a report of its review no later than five years after they take effect in a process separate from the EGRPRA process.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 20, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–16729 Filed 7–31–24; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2008; Project Identifier AD–2024–00122–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by a report that during manufacture of drag brace lower lock link assemblies for the main landing gear (MLG), a certain required inspection was not performed. This proposed AD would require doing a check of maintenance records or an inspection to determine if certain drag brace lower lock link assemblies are installed, and applicable on-condition actions. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 16, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2008; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–2008.

FOR FURTHER INFORMATION CONTACT: Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *joseph.j.hodgin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2008; Project Identifier AD–2024–00122–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *joseph.j.hodgin@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report from Boeing that during manufacture of four drag brace lower lock link assemblies for the MLG, a fluorescent penetrant inspection was not performed. The subsequent investigation determined that the quality escape was caused by human error and has been isolated to a single technician. Undetected cracks could lead to fracture of the drag brace lower lock link assembly. This condition, if not addressed, could lead to MLG collapse, which could result in loss of directional control while the airplane is on the ground, with the potential for off-runway excursion or penetration of the wing box fuel tank.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023. This material specifies procedures for doing a check of maintenance records or an inspection of the drag brace lower lock link assembly on the right and left MLG for affected serial numbers and applicable on-condition actions. On-condition actions include replacing any affected drag brace lower lock link assembly on the MLG with a serviceable drag brace lower lock link assembly. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except as discussed under ''Differences Between this Proposed AD and the Referenced Material,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also prohibit the installation of affected parts. For information on the procedures and compliance times, see this material at *regulations.gov* under Docket No. FAA–2024–2008.

Differences Between This Proposed AD and the Referenced Material

The effectivity of Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023, is limited to Model 787–8, 787–9, and 787–10 airplanes, line numbers 6 through 1168 inclusive. However, the applicability of this proposed AD includes all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. Because the affected drag brace lower lock link assemblies are rotable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable drag brace lower lock link assemblies, thereby subjecting those airplanes to the unsafe condition.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 156 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection or records check	1 work-hour × $85 per hour = $85	$0	$85	$13,260

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of one drag brace lower lock link assembly.	18 work-hours × $85 per hour = $1,530	$39,119	$40,649

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–2008; Project Identifier AD–2024–00122–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 16, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that during manufacture of drag brace lower lock link assemblies for the main landing gear (MLG), a certain inspection was not performed. The FAA is issuing this AD to address undetected cracks that could lead to fracture of the drag brace lower lock link assembly. The unsafe condition, if not addressed, could result in MLG collapse, which could result in loss of directional control while the airplane is on the ground, with the potential for off-runway excursion or penetration of the wing box fuel tank.

(f) Compliance

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

(g) Required Actions

For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023. The actions specified in Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023, apply to airplanes not listed in Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB320048–00, Issue 001, dated November 20, 2023, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023.

(h) Exceptions to Service Information Specifications

Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023, refers to the Issue 001 date of Requirements Bulletin B787–81205–SB320048–00 RB, this AD requires using the effective date of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a drag brace lower lock link assembly, part number 531Z2010–501 and serial number 19ZHQ00772, 19ZHQ00773, 19ZHQ00890, or 19ZHQ00891, on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *AMOC@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(k) Related Information

(1) For more information about this AD, contact Joseph Hodgin, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3962; email: *joseph.j.hodgin@faa.gov*.

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB320048–00 RB, Issue 001, dated November 20, 2023.

(ii) [Reserved]

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

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on July 26, 2024.

Peter A. White,

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

[FR Doc. 2024–16975 Filed 7–31–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2024–1993; Airspace Docket No. 23–AEA–7]

RIN 2120–AA66

Amendment of Restricted Area R–5801 and Revocation of R–5803; Chambersburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend restricted area R–5801 and revoke R–5803 at United States (U.S.) Army, Letterkenny Army Depot (LEAD), Chambersburg, PA. The purpose of this proposal is to extend the time of designation for R–5801 to include Saturdays from 0800–1600 local time, and to return R–5803 to the National Airspace System (NAS).

DATES: Comments must be received on or before September 16, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1993 and Airspace Docket No. 23–AEA–7 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:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except 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 W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends restricted area airspace at Chambersburg, PA, to enhance aviation safety and accommodate essential U.S. Army activities.

Comments Invited

The FAA invites interested persons 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 in light of 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 edit, 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 Office (see **ADDRESSES** section for address, phone number, and hours of operation). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Background

The U.S. Army submitted a proposal to the FAA to amend the time of designation for existing restricted area R–5801 to include Saturdays from 0800–1600 local time, and to revoke restricted area R–5803 at U.S. Army, Letterkenny Army Depot (LEAD), Chambersburg, PA. Restricted areas R–5801 and R–5803 are currently used for the open detonation of obsolete ammunition and explosives for the U.S. Army. Restricted area R–5803 is defined as a circular area with a 5,500-foot radius centered at lat. 40°02′29″ N, long. 77°44′19″ W from the surface to 4,000 feet mean sea level (MSL). Restricted area R–5803 has a time of designation from 0800 to 1600 local time, Monday–Friday.

This proposal would consolidate open detonations to R–5801 and return restricted area R–5803 to the NAS which would improve scheduling, activation, and utilization efficiency of restricted area R–5801 while reducing the overall restricted airspace near the Chambersburg, PA area.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to amend restricted area R–5801 and revoke restricted area

R–5803 at U.S. Army, Letterkenny Army Depot (LEAD), Chambersburg, PA. The proposed changes are described below.

R–5801: R–5801 time of designation is currently 0800 to 1600 local time, Monday through Friday. The FAA proposes to extend the time of designation to 0800 to 1600 local time, Monday through Saturday. This change would provide additional required time for the U.S. Army to execute open detonation of obsolete ammunition and explosives. This amendment does not propose to alter the boundaries or altitudes associated with R–5801.

R–5803: R–5803 serves as a secondary site for detonation of munitions and has been determined that it is no longer needed to meet the U.S. Army's weapons and munition disposal requirements. R–5803 would be revoked and the airspace would be returned to the NAS.

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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.58 Pennsylvania [Amended]

■ 2. Section 73.58 is amended as follows:

* * * * *

R–5801 Chambersburg, PA [Amended]

Boundaries. The arc of a circle, having a 5,000-foot radius, centered at lat. 39°59′44″ N, long. 077°43′54″ W.

Designated altitudes. Surface to 4,000 feet MSL.

Time of designation. 0800 to 1600 local time, Monday-Saturday.

Using agency. U.S. Army, Commanding Officer, Letterkenny Ordnance Depot, Chambersburg, PA.

* * * * *

R–5803 Chambersburg, PA [Removed]

* * * * *

Issued in Washington, DC, on July 23, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–16554 Filed 7–31–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0404]

RIN 1625–AA00

Safety Zone; Hackensack River, Kearny and Secaucus, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Hackensack River. This action is necessary to provide for the safety of life on these navigable waters near the Portal Bridge during construction between November 2024 and December 2025. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port New York or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 3, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0404 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Jeffrey Yunker, Waterways Management Division, U.S. Coast Guard Sector New York; telephone 718–354–4195, email *Jeffrey.M.Yunker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On April 2, 2024, Skanska Traylor Portal North Bridge (PNB) Joint Venture notified the Coast Guard that it is requesting three 14-day windows of waterway closures on the Hackensack River to install three new bridge spans at the PNB. The purpose of the requested 14-day windows is to deliver a 400-foot-long bridge span on a transportation barge that is 80 feet wide. The bridge span will be set on temporary shoring north of the existing bridge and a 100-foot-wide crane barge will then lift the bridge span from the temporary shoring using anchor lines and tugboats. The crane barge will move into the new bridge alignment position using anchor lines and tugboats, jack the new bridge span, set onto the temporary supports, and slide the bridge into the final location. Once the bridge is set, the crane barge, support barges, and anchor lines will be removed out of the channel to prepare for the subsequent bridge span erection. This procedure will occur three times.

An additional fourth 14-day window is being considered to accommodate potential weather issues or schedule delays because of unforeseen circumstances. After setting the first bridge span, each 14-day window will be re-evaluated and may be narrowed so that marine traffic may be able to

resume before the 14-day window is over.

The Captain of the Port New York (COTP) has determined that potential hazards associated with the bridge construction would be a safety concern for anyone within the construction area and adjacent navigable waters.

The purpose of this rulemaking is to protect personnel, vessels, and the marine environment from potential hazards created by the PNB construction activities between the New Jersey Turnpike/I–95 Fixed Bridge (River Mile 5.3) and 150 feet south of the existing Portal Bridge (River Mile 5.0) on the Hackensack River. The Coast Guard is proposing this rulemaking under the authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from November 15, 2024, through December 31, 2025. The safety zone would only be enforced during periods when heavy lift operations at the new bridge are in progress.

The anticipated dates for the first three 14-day windows of full channel closures are from 12:01 a.m. on November 15, 2024, through 11:59 p.m. on November 28, 2024; from 12:01 a.m. on December 10, 2024, through 11:59 p.m. on December 23, 2024; and from 12:01 a.m. on January 13, 2025, through 11:59 p.m. on January 27, 2025. Additionally, the fourth schedule from 12:01 a.m. on February 2, 2025, through 11:59 p.m. on February 15, 2025, is being considered. All these dates are tentative and subject to change due to weather, supply chain delays, or other unforeseen circumstances.

The Coast Guard is proposing this rule remain effective through December 31, 2025, in case the project is delayed due to unforeseen circumstances. The safety zone would cover all navigable waters of the Hackensack River between the New Jersey Turnpike/I–95 Fixed Bridge (River Mile 5.3) and 150 feet south of the existing Portal Bridge (River Mile 5.0). The duration of the zone is intended to ensure the safety of personnel, vessels, and these navigable waters during the bridge construction.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time of year of the safety zone. The bridge owner and contractor are coordinating the full waterway closures with the upstream Bergen County Utilities Authority who may transport treated sewage sludge via tug and barge or overland trucks. The safety zone is only in effect on the navigable waters of the Hackensack River between the New Jersey Turnpike/I–95 Fixed Bridge (River Mile 5.3) and 150 feet south of the existing Portal Bridge (River Mile 5.0). The Coast Guard will notify the public of the enforcement of this rule through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone from the New Jersey Turnpike/I–95 Fixed Bridge (River Mile 5.3) and 150 feet south of the existing Portal Bridge (River Mile 5.0) on the Hackensack River. Normally such actions are categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0404 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T01–0404 to read as follows:

§ 165.T01–0404 Safety Zone; Hackensack River, Kearny and Secaucus, NJ.

(a) *Location.* The following area is a safety zone: All the navigable waters of the Hackensack River between the New Jersey Turnpike/I–95 Fixed Bridge (River Mile 5.3) and 150 feet south of the existing Portal Bridge (River Mile 5.0).

(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 New York (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF Channel 16 or by phone at (718) 354–4353 (Sector New York Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective from November 15, 2024, through December 31, 2025, but will only be enforced during periods when heavy lift operations at the new bridge are in progress.

Jonathan A. Andrechik,

Captain, U.S. Coast Guard, Captain of the Port, Sector New York.

[FR Doc. 2024–16762 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2024–0224; FRL–11566–01–R7]

Disapproval and Promulgation of Air Quality Implementation Plan; Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Completion of Remand

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA)

is proposing this action to address the voluntary remand of a portion of a final rulemaking published in the **Federal Register** on July 6, 2012, addressing regional haze obligations for the first planning period in Nebraska. Specifically, we are revisiting and implementing a Federal Implementation Plan (FIP) applicable to the Gerald Gentleman Station, owned and operated by the Nebraska Public Power District (NPPD). In this action, the EPA is proposing a revised FIP that will limit sulfur dioxide (SO_2) emissions at the Gerald Gentleman Station. The EPA proposes to determine that SO_2 emission reductions are needed to make reasonable progress toward Congress' natural-visibility goal at Class I areas affected by visibility-impairing emissions from Nebraska. This proposal addresses only the remanded portion of the Nebraska FIP.

DATES: Comments must be received on or before September 30, 2024. The EPA will hold an in-person public hearing in Nebraska and a separate virtual public hearing. For more information on the in-person and virtual public hearings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2024–0224, to the Federal eRulemaking Portal: *https://www.regulations.gov.* For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Docket: The docket for this action is available electronically at *https://www.regulations.gov.* Some information in the docket may not be publicly available via the online docket due to docket file size restrictions, or content (*e.g.,* CBI). To request a copy of the files, please send a request via email to *vit.wendy@epa.gov.* For questions about a document in the docket please contact individual listed in the **FOR FURTHER INFORMATION CONTACT** section.

Confidential Business Information (CBI): Do not submit information containing CBI to the EPA through *https://www.regulations.gov.* To submit information claimed as CBI, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Clearly mark the part or all of the information that you claim to be 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 earlier. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/ne/state-nebraska* or contact us via email at *wolkins.jed@epa.gov.* For more information on the virtual public hearing, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: *wolkins.jed@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to the EPA.

Virtual public hearing: The EPA is holding a virtual public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The virtual public hearing will be on September 3, 2024 at 1:00 p.m. Central Time (CT) and will conclude at 5:00 p.m. CT or 15 minutes after the last pre-registered presenter in attendance has presented if there are no additional presenters.

The EPA will begin pre-registering speakers and attendees for the hearing upon publication of this document in the **Federal Register**. To pre-register to attend or speak at the virtual public hearing, please use the online registration form available at *https://www.epa.gov/ne/state-nebraska* or contact us via email at *wolkins.jed@epa.gov.* The last day to preregister to speak at the hearing will be August 26, 2024. The EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at *https://www.epa.gov/ne/state-nebraska.* Additionally, requests to speak will be taken on the day of the hearing as time allows.

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 approximately 3 to 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a written copy of their oral testimony electronically by emailing it to *wolkins.jed@epa.gov.* 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 virtual public hearing. A transcript of the virtual public hearing, as well as written copies of oral presentations submitted to the EPA, will be included in the docket for this action.

The EPA is asking all hearing attendees to pre-register, even those who do not intend to speak. The EPA will send information on how to join the public hearing to pre-registered attendees and speakers. Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/ne/state-nebraska.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us via email at *wolkins.jed@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 the services of a translator or a special accommodation such as audio description/closed captioning, please pre-register for the hearing and describe your needs by August 8, 2024. The EPA may not be able to arrange accommodations without advance notice.

Table of Contents

I. Executive Summary

The CAA's visibility protection program was created in the 1977 CAA Amendments. In CAA section 169A, Congress declared a national goal to remedy any existing and prevent any future visibility impairment in certain national parks, such as Badlands in South Dakota and Rocky Mountain in Colorado, and national wilderness areas, such as the Wichita Mountains Wilderness in Oklahoma. Vistas in these areas (referred to as Class I areas) are often obscured by visibility impairment such as regional haze, which is caused by emissions from numerous sources located over a wide geographic area.

In response to a Congressional directive to provide regulations to the states, the EPA promulgated regulations to address visibility impairment in 1999. These regulations, which are commonly referred to as the Regional Haze Rule, established an iterative process for achieving Congress's national goal by providing for multiple, approximately 10-year ''planning periods'' in which state air agencies must submit to the EPA plans that address sources of visibility-impairing pollution in their states. The first state plans were due in 2007 for the planning period that ended in 2018. The second state plans were due in 2021 for the period that ends in 2028. This proposal focuses on remaining obligations from the first planning period of the regional haze program.

The CAA and Regional Haze Rule require states to submit a long-term strategy (LTS) that includes such measures as may be necessary to make reasonable progress toward the national visibility goal for each Class I area. A central element of the LTS for the first planning period state plans was the requirement for certain older stationary sources to install the Best Available Retrofit Technology (BART) for the purpose of eliminating or reducing visibility impairment within our nation's most treasured lands. The other central element of a state's LTS is the requirement to include any additional control measures that are necessary to make ''reasonable progress'' towards the national goal. To determine what control measures are necessary to make reasonable progress and therefore must be included in the LTS, the four statutory factors must be considered: (1) the costs of compliance, (2) the time necessary for compliance, (3) the energy and nonair quality environmental impacts of compliance, and (4) the remaining useful life of any existing source subject to such requirements. This statutory requirement is often referred to as a ''four-factor analysis.'' Additionally, when visibility-impairing emissions from multiple states impact the same national park or wilderness area, the Regional Haze Rule requires those states to coordinate and consult with one another to ensure that each state is making reasonable progress toward the national goal.

Gerald Gentleman Station, located in western Nebraska, is one of the highest emitters of visibility-impairing pollutants, specifically SO_2, in the nation. These emissions cause or contribute to visibility impairment in such iconic places as Wind Cave and Badlands National Parks in South Dakota and Rocky Mountain National Park in Colorado. To address this visibility impairment, Nebraska submitted its first regional haze state implementation plan (SIP) on July 13, 2011. Nebraska included a BART determination for SO_2 emissions from the Gerald Gentleman Station. In July 2012, the EPA disapproved portions of the state's SIP, including the BART determination for Gerald Gentleman Station, finding significant flaws in several aspects of the state's analysis of potential emission control technologies. The EPA also disapproved the state's LTS for SO_2 at Gerald Gentleman Station to the extent that it relied on the flawed BART determination. The EPA promulgated a FIP in place of the elements of the SIP that it disapproved. The EPA determined that BART for Gerald Gentleman Station was satisfied by the facility's participation in the Cross-State Air Pollution Rule (CSAPR) national trading program. The EPA further found that the gap left in the state's LTS by the EPA's partial disapproval were also satisfied by the CSAPR.

The NPPD, who owns and operates the Gerald Gentlemen Station, and several environmental groups filed petitions for review of various aspects of the EPA's 2012 final action. The EPA sought and received a voluntary remand without vacatur to reconsider the portion of the final action relating to the LTS for SO_2 at the Gerald Gentleman Station.[1] After considering relevant facts, the EPA is proposing to amend its FIP.

Nebraska remains one of the few states in the nation that does not have a complete first planning period regional haze plan in place to protect the national parks and wilderness areas impacted by its sources. With this action, the EPA is proposing a new FIP that will satisfy the regional haze statutory and regulatory requirements for the first planning period.

II. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area. These sources and activities emit fine particulate matter ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and its precursors (*e.g.,* SO_2, nitrogen oxides (NO_X), and, in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which, in addition to direct sources of $PM_{2.5}$, impairs visibility by scattering and absorbing light. Visibility impairment (*i.e.,* light scattering) reduces the clarity, color, and visible distance that one can see.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any existing, anthropogenic (manmade) impairment of visibility in 156 national parks and wilderness areas designated as

[1] The remainder of the 2012 final rule was upheld by the Eighth Circuit. *Nebraska* v. *EPA,* 812 F.3d 662 (8th Cir. 2016).

mandatory Class I areas.[2] Congress added section 169B to the CAA in 1990 to address regional haze issues, and the EPA promulgated the Regional Haze Rule, codified at 40 CFR 51.308,[3] on July 1, 1999.[4] The Regional Haze Rule established a requirement for all states, the District of Columbia, and the Virgin Islands to submit a regional haze SIP.[5] The primary purpose of the Regional Haze Rule is to outline the requirements for states to develop programs that assure reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.[6]

To address regional haze visibility impairment, the Regional Haze Rule established an iterative planning process that requires states to periodically submit SIP revisions (each periodic revision referred to as a ''planning period'') to address regional haze visibility impairment at Class I areas.[7] Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' and the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility-impairing pollutants install and operate BART.[8] States' first regional haze SIPs were due by December 17, 2007, with subsequent SIP submissions containing revised long-term strategies originally due July 31, 2018, and every ten years thereafter.[9]

1. Determination of Baseline, Natural, and Current Visibility Conditions

The Regional Haze Rule establishes the deciview (dv) as the principal metric for measuring visibility.[10] This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is also sometimes expressed in terms of the visual range or light extinction. Visual range is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. Light extinction, expressed in units of inverse megameters (Mm^{-1}), is the amount of light lost as it travels over distance. The haze index, in units of dv, is calculated directly from the total light extinction. The dv is a useful measure for tracking progress in improving visibility because each dv change is approximately an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one dv.[11]

The dv is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states with Class I areas, must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the Regional Haze Rule requirements for the first planning period[12] provide that states must determine the degree of impairment (in dv) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. The EPA provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in the first planning period.[13]

For the regional haze SIPs for the first planning period, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area on the 20 percent least and most impaired days, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the starting point from

[2] Areas designated as mandatory Class I areas consist of National Parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are not relevant here.

[4] *See* 64 FR 35714 (July 1, 1999). On January 10, 2017, the EPA promulgated revisions to the Regional Haze Rule that apply for the second and subsequent implementation periods. *See* 82 FR 3078 (Jan. 10, 2017).

[5] 40 CFR 51.300(b).

[6] *Id.* at 51.300(a).

[7] *See* 42 U.S.C. 7491(b)(2); 40 CFR 51.308 (b) and (f); *see also* 64 FR at 35768. The EPA established in the Regional Haze Rule that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area;'' therefore, all states must submit regional haze SIPs. *See* 64 FR at 35721. In addition to each of the 50 states, the EPA also concluded that the Virgin Islands and District of Columbia contain a Class I area and/or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. *See* 40 CFR 51.300(b) and (d)(3).

[8] *See* 42 U.S.C. 7491(b)(2)(A); 40 CFR 51.308 (d) and (e).

[9] *See* 40 CFR 51.308(b). The 2017 Regional Haze Rule revisions changed the second period SIP due date from July 31, 2018, to July 31, 2021, and maintained the existing schedules for the subsequent implementation periods. *See* 40 CFR 51.308(f).

[10] *See* 64 FR 35714, 35725–27 (July 1, 1999).

[11] The preamble to the Regional Haze Rule provides additional details about the deciview. 64 FR at 35725.

[12] The applicable requirements of the Regional Haze Rule for the first planning period are found in 40 CFR 51.308(d).

[13] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20030901_oaqps_epa-454_b-03-005_estimating_natural%20_visibility_regional_haze.pdf* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* EPA–454/B–03–004, September 2003, available at *https://www.epa.gov/sites/default/files/2021-03/documents/tracking.pdf* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

which improvement in visibility is measured in the first planning period.

2. Reasonable Progress and Long-Term Strategy (LTS)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs, including a LTS, from the states that have emissions expected to impact visibility in any Class I area. Additionally, states with Class I areas must establish two reasonable progress goals (RPGs) (*i.e.,* one for the ''best'' and one for the ''worst'' days) for each Class I area within the state for each (approximately) 10-year planning period.[14] The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In establishing RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP and ensure no degradation in visibility for the least impaired days over the same period.[15]

Further, CAA section 169A(b)(2)(B) requires all states to include in their regional haze SIP a long-term (10-to-15-year) strategy for making reasonable progress towards the national goal. Consistent with this statutory obligation, 40 CFR 51.308(d)(3) requires all states (both downwind and upwind) to ''submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the state and each mandatory Class I Federal area located outside the state which may be affected by emissions from the state.'' [16] A state's LTS is therefore inextricably linked to the RPGs [17] because it ''must include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the RPGs established by states having mandatory Class I Federal areas.[18]

In establishing its LTS, a state must meet a number of requirements. First, as a corollary to § 51.308(d)(1)(iv), when a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the Regional Haze Rule requires the downwind state to coordinate with the upwind states in order to develop coordinated emissions management strategies.[19] The purpose of the consultation requirement is to ensure that the upwind states adopt control measures sufficient to address their apportionment of emission reductions necessary to achieve reasonable progress and that the downwind state's RPGs properly account for the visibility improvement that will result from the reasonable control measures identified and included in the upwind state's LTS.

Second, where multiple states contribute to visibility impairment in a Class I area, each state ''must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area.'' [20] This requirement addresses situations where an upwind state agrees to achieve certain emission reductions during the consultation process, and downwind states rely upon those reductions when setting their RPGs, but the upwind state ultimately fails to include sufficient control measures in its LTS to ensure that the emission reductions will be achieved. In such a situation, the upwind state's LTS would not meet the statutory or regulatory requirements.

Finally, each state ''must document the technical basis, including modeling, monitoring and emissions information on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects.'' [21] Section 169(A)(g)(1) of the CAA requires states to determine ''reasonable progress'' by considering the four statutory factors: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources.[22] Therefore, this provision requires states to consider downwind Class I areas when they develop the technical basis underlying their four-factor analysis to determine which control measures are necessary to make reasonable progress, and thus need to be a part of their LTS. The regulations further provide that, ''States may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all State participants.'' [23] Thus, states have the option of meeting this requirement by relying on four-factor analyses and associated technical documentation prepared by a regional planning organization on behalf of its member states,[24] to the extent that such analyses and documentation were conducted. In situations where a regional planning organization's analyses are limited, incomplete or do not adequately assess the four factors, however, then states must fill in any remaining gaps to meet this requirement. States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources.[25] At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address ''reasonably attributable visibility impairment'' (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS.[26]

3. Federal Land Manager (FLM) Consultation

The Regional Haze Rule requires that a state, or the EPA if promulgating a FIP, consult with FLMs before adopting and submitting a required SIP or SIP revision or a required FIP or FIP revision. Under 40 CFR 51.308(i)(2), a state, or the EPA if promulgating a FIP, must provide an opportunity for consultation no less than 60 days prior to holding any public hearing or other public comment opportunity on a SIP or SIP revision, or FIP or FIP revision, for regional haze. The EPA must include a description of how it addressed comments provided by the FLMs when considering a FIP or FIP revision.

[14] *See* 64 FR at 35730–37.

[15] *Id.*

[16] 40 CFR 51.308(d)(3).

[17] 40 CFR 51.308(d)(1)

[18] 40 CFR 51.308(d)(3).

[19] 40 CFR 51.308(d)(3)(i).

[20] 40 CFR 51.308(d)(3)(ii).

[21] 40 CFR 51.038(d)(3)(iii).

[22] 42. U.S.C. 7491(g)(1).

[23] 40 CFR 51.308(d)(3)(iii).

[24] *See WildEarth Guardians* v. *EPA,* 77 F.3d 919 at 944 (10th Cir. Oct. 21, 2014) (explaining that 40 CFR 51.308(d)(3)(iii) ''permits a State conducting a reasonable-progress determination'' ''to rely on [a regional planning organization's] four-factor analysis.'').

[25] 40 CFR 51.308(d)(3)(iv); *See also* 40 CFR 51.301.

[26] 40 CFR 51.308(d)(3)(v).

B. Previous Actions Related to Nebraska's Regional Haze Long-Term Strategy for the First Planning Period

On July 6, 2012, the EPA took final action on Nebraska's Regional Haze SIP for the first planning period.[27] In that final action, the EPA partially approved and partially disapproved the state's SIP. The EPA disapproved the state's SO_2 BART determinations for Gerald Gentleman Station Units 1 and 2 and the state's LTS, which had relied on the state's flawed BART determinations.[28] The reasons for the EPA's disapproval are outlined in both the proposed rule and the final rule.[29] In the same action, the EPA also promulgated a FIP to address the deficiencies in Nebraska's Regional Haze Plan. For those deficiencies associated with the state's SO_2 control decisions for Gerald Gentleman Station Units 1 and 2, the EPA relied on the CSAPR to meet both the BART requirement and the LTS requirement to make reasonable progress.[30] Specifically, the EPA relied on its finding in a separate national rulemaking that CSAPR provides for greater reasonable progress on average across all affected Class I areas than source-specific BART in those states covered by the CSAPR (the ''Better than BART Rule'').[31] In that separate national rulemaking, the EPA revised the Regional Haze Rule to provide that states could choose to rely on the CSAPR as an alternative to BART. Consistent with this regulatory provision, the EPA relied on the CSAPR as an alternative to BART for SO_2 emissions from the Gerald Gentleman Station. In addition, the EPA concluded in the FIP that reliance on the CSAPR would remedy the deficiency in Nebraska's LTS for SO_2 at the Gerald Gentlemen Station.

C. Prior Litigation and EPA's Motion for Voluntary Remand

Sierra Club, the NPCA, the State of Nebraska, and NPPD filed petitions for review challenging EPA's final action in the Eighth Circuit Court of Appeals.[32] In response to arguments raised by the Sierra Club and NPCA during briefing on the petitions, the EPA moved for a voluntary remand without vacatur of the LTS portion of the FIP for Nebraska as it related to SO_2 emissions from the Gerald Gentleman Station.[33] The EPA explained in its motion that the Agency's rationale for declining to require additional SO_2 controls at the Gerald Gentleman Station as part of the LTS in its FIP was not fully or clearly explained. The EPA also stated that the explanation in the record could potentially be construed in a manner that was inconsistent with the EPA's interpretation of the relevant statutory requirements. As a result, the EPA determined that a remand was appropriate to afford the Agency an opportunity to amend or further explain its rationale for declining to require additional SO_2 controls beyond the CSAPR in the LTS, more fully respond to comments submitted by the public, or to take further action if necessary. The Court granted the remand on March 19, 2015. On January 19, 2017, the EPA Region 7 Administrator signed a proposed FIP that would have addressed the remanded portion of the Nebraska FIP for the first planning period. However, subsequent to the Administration change, the Office of Management and Budget published a memorandum requesting that any action that had been sent to the **Federal Register**, but had not yet published, be immediately withdrawn for review and approval by the new administration.[34] After being withdrawn, no action was taken on the FIP. Therefore, the EPA now is proposing a similar, updated action to address the remanded portion of the Nebraska FIP for the first planning period.

III. Overview of Proposed Action

To address the voluntary remand, we are proposing to revise our FIP so that the LTS adequately addresses SO_2 emissions from Gerald Gentlemen Station. Specifically, the EPA is proposing an SO_2 emission limit of 0.06 lb/MMBtu on a 30-day rolling average basis for the Gerald Gentleman Station Unit 1 and Unit 2 to ensure that multiple Class I areas impacted by the Station's emissions can make reasonable progress toward Congress's natural-visibility goal. The EPA is also taking comment on the control options and limits analyzed in this action.

IV. Legal Authority for This Action

The EPA has the authority to revisit its prior FIP actions on remand. As previously stated, the EPA moved for a partial voluntary remand of the FIP without admitting error. The Eighth Circuit granted the motion and remanded the action to the EPA on Marth 19, 2015. Thus, the EPA has an obligation to complete its action on remand.

On remand, the EPA is taking this action pursuant to CAA sections 110(c)(1), 110(k)(3), and 169A(b)(2). CAA section 169A(b)(2) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the national visibility goal. Additionally, CAA section 110(k)(3) authorizes the EPA to approve, disapprove, or partially approve and partially disapprove a SIP or SIP revision, and CAA section 110(c)(1) authorizes the EPA to promulgate a FIP where ''the Administrator . . . disapproves a state implementation plan submission in whole or in part.'' The EPA's authority to take such actions under the CAA necessarily provides it the inherent authority to revisit and amend such actions as necessary. *See Trujillo* v. *Gen Elec. Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980). It is well established that agencies have inherent authority to revisit past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Motor Vehicle Manufacturers Ass'n of the United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 42 (1983); *see also Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 221–22 (2016). Further, the Eighth Circuit granted the EPA's request for a voluntary remand, and this action responds to that remand.

V. EPA's Review of the 2012 Federal Implementation Plan on Remand

In this action, the EPA is proposing to act on the remanded portion of our FIP as it relates to LTS requirements for SO_2 for the Gerald Gentleman Station. Specifically, the EPA is supplementing the record with a four-factor analysis for SO_2 at Gerald Gentleman Station. As a result of this analysis, the EPA is proposing a new FIP with a 0.06 lb/MMBtu emissions limit for SO_2 as a part of Nebraska's LTS. In EPA's final 2012 action, the EPA relied on the implementation of the previously adopted CSAPR FIP for all Nebraska Electric Generating Units (EGUs) to satisfy the LTS requirements of the Regional Haze Rule for SO_2, including for the Gerald Gentleman Station. At the time of the final action, the EPA did not further evaluate whether, with respect

[27] 77 FR 40149.

[28] The EPA approved rest of the Nebraska SIP including these elements of the LTS. See 77 FR 12770 (March 2, 2012) (proposed rule); 77 FR 40149 (July 6, 2012) (final rule).

[29] *Id.*

[30] *Id.*

[31] 77 FR 33642.

[32] NPPD dismissed its petition voluntarily but remained as an intervenor in the other petitions. See Order, *Neb. Pub. Power Dist.* v. *EPA,* No. 12–3061 (8th Cir. November 4, 2014).

[33] EPA's Motion for Partial Voluntary Remand, *Nebraska.* v. *EPA,* 812 F.3d 662 (8th Cir. 2015) (No.12–3084).

[34] 82 FR 8346.

to the Gerald Gentleman Station, the CSAPR was an appropriate and sufficient measure needed in its LTS for making reasonable progress towards natural visibility conditions at the Class I areas it impacts; that is, the Badlands, Wind Cave, and Rocky Mountain National Parks. The environmental petitioners pointed out this deficiency in their challenge of EPA's final action. The EPA agreed, and thus requested and was granted a remand.

For the first planning period, Nebraska participated in the Central Regional Air Planning Association (CENRAP) and incorporated the CENRAP-developed visibility modeling into their regional haze SIP. The SIP relied on the CENRAP modeling, which assumed SO_2 controls at a rate of 0.15 lb/MMBtu at Gerald Gentleman Station.[35] As explained in our 2012 final action on the Nebraska regional haze SIP, source-specific CALPUFF modeling shows a significant visibility impact from Gerald Gentleman Station on South Dakota's Class I areas, Wind Cave and Badlands National Parks.[36] The Colorado Department of Public Health and the Environment also commented on Nebraska's regional haze SIP, requesting that the state reconsider the question of whether the Gerald Gentleman Station should install SO_2 controls, given Gerald Gentleman Station's CALPUFF modeled impacts on Rocky Mountain National Park.[37] [38] Nebraska consulted with both South Dakota and Colorado during the first planning period. Based on their BART determination, Nebraska did not require source-specific BART controls at Gerald Gentleman Station as part of their LTS in their regional haze SIP. As explained in our partial disapproval of the state's regional haze SIP, Nebraska did not include an adequate justification explaining why controls at the Gerald Gentleman Station were not included as part of the LTS, nor did Nebraska provide an adequate explanation or documentation of why their conclusions otherwise satisfied the requirements of 40 CFR 51.308(d)(3)(iii) to ''determine its apportionment of emission reduction obligations necessary for achieving reasonable progress.''

In addition to the CALPUFF modeling used in its BART determination, Nebraska also used CENRAP CAMx photochemical source apportionment modeling to identify the pollutants (*e.g.,* sulfates, nitrates) and source categories (*e.g.,* elevated point EGUs) that most impact visibility at Class I areas located in surrounding states. A summary of the annual emissions used for Nebraska elevated point sources and Gerald Gentleman Station in the 2002 base year and 2018 future year CENRAP modeling is shown in table 1 of the Analysis and Modeling Technical Support Document (Analysis and Modeling TSD) for this action.

The EPA reviewed both the 2018 CENRAP CAM_x source apportionment modeling used by Nebraska and the Western Resources Air Partnership (WRAP) 2018 CAM_x source apportionment used by South Dakota and Colorado to establish RPGs at their respective Class I areas. In setting their RPGs, both South Dakota and Colorado used the WRAP 2018 PRP18b modeling platform, which assumed an SO_2 control rate of 0.15 lb/MMBtu at Gerald Gentleman, which is similar to the 2018 CENRAP modeling. The modeled combined emissions at Gerald Gentleman Station Units 1 and 2 showed SO_2 emissions decreasing from 32,152 ton per year (tpy) in 2002 to 8,732 tpy in 2018 (with controls to achieve the 0.15 lb/MMBtu SO_2 emission limit assumed to be in operation in 2018).[39] This reduction of the CAM_x modeled SO_2 emissions at Gerald Gentleman Station helps lower the projected SO_2-caused light extinction at Badlands National Park contributed by Nebraska elevated point sources from 0.98 Mm^{-1} in 2002 to 0.47 Mm^{-1} in 2018. The decrease in the SO_2 extinction at Badlands National Park from Nebraska elevated point sources is due to the decrease in modeled emissions from 2002 to 2018, and in particular the decrease in modeled SO_2 emissions at Gerald Gentleman Station due to the assumption of the achievement of a 0.15 lb/MMBtu emission rate in 2018. The EPA therefore finds that the CAMx modeling performed by both CENRAP and WRAP shows that emissions from Gerald Gentleman Station contribute to visibility impairment at the Badlands Class I area in South Dakota.

In 2012, the EPA evaluated Nebraska's SIP and determined it did not appropriately address the LTS requirements of the Regional Haze Rule related to Gerald Gentleman Station. Although there were modeled visibility impacts and improvements from the installation of cost-effective controls at Gerald Gentleman Station at Class I areas, Nebraska did not require any reduction in SO_2 emissions from Gerald Gentleman Station. The EPA partially disapproved Nebraska's LTS based on the state's reliance on the deficient SO_2 control determination for Gerald Gentleman Station. The EPA also promulgated a FIP in which we relied on the CSAPR to address this deficiency in Nebraska's SIP, but the EPA did not conduct a four factor analysis to evaluate whether additional controls beyond the CSAPR at Gerald Gentleman Station were required to ensure the SIP included all measures necessary to obtain Nebraska's share of the emission reductions needed to make reasonable progress towards the national goal at the Class I areas its emissions impact. Therefore, in order to provide a more thorough rationale on its LTS determination, the EPA requested and was granted a remand in order to provide a more robust explanation.

To properly evaluate whether the CSAPR was sufficient to satisfy Nebraska's obligation to address the visibility impacts of their emissions at the Class I areas it affects, the EPA has reviewed the record from the proposed and final actions. The EPA has found that the reductions expected (and now observed) from the implementation of the CSAPR do not equate to the reductions presumed by the CENRAP and WRAP modeling that were found to be achievable at a reasonable cost by both Nebraska and the EPA. We are therefore proposing to conclude that the CSAPR budgets for Nebraska are inadequate to ensure reasonable progress at neighboring Class I areas.

[35] For comparison, the SO_2 emission rate at Gerald Gentleman Station was about 0.58 lb/MMBtu during 2002, which was the period used as the baseline by Nebraska when it developed its SIP. In 2015 the emission rate was 0.57 lb/MMBtu. In 2022, the emission rate was 0.57 lb/MMBtu.

[36] 77 FR at 12776.

[37] 77 FR 12776–12777.

[38] Gerald Gentleman Station CALPUFF modeling visibility impacts were 1.15 deciview at Rocky Mountain. The source-specific CALPUFF modeling approach and results are provided in EPA's Analysis and Modeling TSD.

[39] WRAP–RMC_2002–18_Modeling_Gerald_Gentleman.xlsx in the docket.

The EPA's determination in 2012 that the CSAPR provides for greater reasonable progress than BART was based on an assessment that the CSAPR would provide for greater visibility improvement, on average, across all affected Class I areas.[40] In our assessment of the relative impacts of the CSAPR and BART on visibility, the EPA considered separately the average visibility improvement across the 60 Class I areas in the eastern portion of the CSAPR modeling domain and the average impact across all 140 Class I areas in the 48 contiguous states with sufficiently complete monitoring data to support our analysis.[41] In both cases, the Agency concluded that the CSAPR would provide for greater reasonable progress than BART on a regional basis. Both assessments showed, however, that source-specific BART would provide for greater visibility improvement than participation in the CSAPR in a number of Class I areas west of the Mississippi River and east of the Rocky Mountains, including at the Wind Cave and Badlands National Parks in South Dakota.[42]

That being said, as mentioned previously, in addition to the BART requirements, first planning period regional haze SIPs also have LTS requirements that are separate and apart from BART. The fact that a BART alternative provides for greater reasonable progress on average across a number of Class I areas in order to be considered a valid BART alternative, does not inherently mean that the same BART alternative can also be used, without additional explanation or analysis, to automatically satisfy the LTS requirements to ensure reasonable progress.[43] As stated above, like the BART requirements laid out in CAA 169A(b)(2)(A) and 40 CFR 51.308(e), in order to show that a state's SIP is also making reasonable progress toward the national goal pursuant to CAA 169A(a)(1) & (b)(2)(B), it must also meet separate requirements outlined in 40 CFR 51.308(d). For example, each state must document the information upon which it is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each Class I area it affects, which includes considering the four statutory factors set forth in section 169(A)(g)(1).[44]

In assessing the impacts of the CSAPR on SO_2 emissions from Nebraska, the CSAPR did not drive comparable SO_2 reductions at the Gerald Gentleman Station to those achievable from SO_2 controls. Prior to the CSAPR, Gerald Gentleman Station had a five-year annual average SO_2 emissions of 27,600 tons. After the CSAPR implementation on January 1, 2015, Gerald Gentleman Station has had annual SO_2 emission ranging from 18,200 to 27,700 tons with an annual average of 22,400 tons from 2015 to 2022.[45] In the most recent year (2022) of available data, Gerald Gentleman Station's facility-wide annual SO_2 emissions were 21,228 tons, which ranks 3rd nationally across electrical generating units. Currently, Nebraska receives 68,162 tons of SO_2 allowances under the CSAPR and 28,896 tons of SO_2 allowances are given annually to Gerald Gentleman Station. Despite the CSAPR being a valid BART alternative to fulfill Nebraska's first planning period BART requirements, because of the amount of the CSAPR allowances provided to Nebraska, as it relates to its LTS requirements, the CSAPR has not resulted in any additional SO_2 emissions reductions from Gerald Gentleman Station. Instead, the year-to-year variability seen in annual emissions is primarily driven by fluctuations in coal sulfur content and utilization. As an example, if Nebraska had implemented the 0.15 lb/MMBtu presumptive SO_2 limit used in the CENRAP and WRAP modeling, as relied upon by other CENRAP and WRAP states, Gerald Gentleman Station would have had annual SO_2 emissions ranging from 5,500 to 8,300 tons.[46] Given the lack of reductions required by the CSAPR in Nebraska coupled with the history outlined above regarding Nebraska's consultation with neighboring states, the EPA is proposing that it is inappropriate to rely on the CSAPR to ensure reasonable progress toward natural visibility without further consideration of appropriate SO_2 control measures for Gerald Gentleman Station.

Therefore, in this action, the EPA has provided an analysis of the LTS in accordance with 40 CFR 51.308(d) and the CAA 169A(b)(2)(B). This analysis includes a discussion of the four statutory factors outlined in CAA 169A(g)(1) to determine whether additional emission reduction measures are necessary at the Gerald Gentleman Station to fulfill the LTS requirements of the Regional Haze Rule to ensure reasonable progress towards the national goal.

To complete the reasonable progress four-factor analysis the EPA must look at the following: the costs of compliance; the time necessary for compliance; the energy and non-air environmental impacts of compliance; and the remaining useful life of any potentially affected sources.[47] The Guidance for Setting Reasonable Progress Goals under the Regional Haze Program [48] notes the similarity between some of the reasonable progress factors and the BART factors contained in 40 CFR 51.308(e)(1)(ii)(A),and suggests that the BART Guidelines be consulted regarding cost, energy and non-air quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in quantifying and considering those reasonable progress factors, as applicable.

Each of the elements of the four-factor analysis is discussed below.

A. Factor 1—The Costs of Compliance

1. EPA's Evaluation of Costs for BART in the 2012 Proposed and Final Rule

In the 2012 proposed and final action, the EPA and Nebraska evaluated the cost of installation of wet FGD on Gerald Gentleman Station. Nebraska, in their SIP, concluded that these costs were reasonable on a cost per ton basis for both units combined ($2,726/ton).[49] Nebraska also evaluated controls at Gerald Gentleman Station on a dollars per dv basis.[50] Nebraska determined that while costs on a dollar per ton basis

[40] 77 FR 33642 (June 7, 2012).

[41] 76 FR 82219, 82225–82227 (December 30, 2011).

[42] 77 FR at 33650; TSD for CSAPR Better-than-BART found at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2011-0729-0014.*

[43] 70 FR 39104, 39143–144 (July 6, 2005).

[44] 40 CFR 51.308(d)(3)(iii); 42 U.S.C. 7491(g)(1).

[45] Based on CAMD information. See the file ''CAMD SO_2 annual emissions from GGS20152022.cvs'' in the docket for this action.

[46] Based on a conservative 70% reduction in emissions.

[47] 40 CFR 51.308(d)(1)(i); 42 U.S.C. 7491(g)(1).

[48] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, June 1, 2007. The 2019 Guidance includes the June 1, 2007 in its list of other guidance and does not contradict it. While the 2019 Guidance discusses reasonable progress and the four-factor analysis, the EPA is using the June 1, 2007 Guidance since this is a first Planning Period action.

[49] The Nebraska cost analysis was done using a dollar year prior to 2012. The state analysis and the prior EPA cost analysis were completed using a dollar year at least ten years earlier than the cost analysis in this document. Inflation has been factored into EPA's current cost analysis based on 2022 dollars.

[50] As explained in the final action in 2012, the BART Guidelines require the costs of controls to be evaluated on a dollar per ton basis. In their BART determinations, Nebraska used a threshold of $40 million/dv/year; in their review of the BART analysis for Gerald Gentleman Station, the EPA concluded that Nebraska had overestimated the cost of control and underestimated the control efficiency of scrubbers and ignored the cumulative visibility impacts of controls at Gerald Gentleman Station. If Nebraska had appropriately estimated the cost of control and considered cumulative benefits, scrubbers would have been found to be cost effective on a dollars per deciview basis under the threshold set by Nebraska. See 77 FR 40157.

were reasonable, costs on a dollar per dv basis were not reasonable.[51] Nebraska also saw water consumption of wet flue-gas desulfurization (FGD) controls as significant and concluded that because of this unique situation, wet FGD controls were unreasonable for Gerald Gentleman Station Units 1 and 2.[52]

The EPA agreed with Nebraska that the cost per ton for FGD was reasonable and that Nebraska's analysis showed significant visibility improvement both at Badlands National Park and on a cumulative basis.[53] The EPA also found that Nebraska inappropriately ruled out dry sorbent injection (DSI), because the EPA found that costs were reasonable and visibility improvement was significant.[54]

The EPA also found that Nebraska made several errors in determining the cost of controls.[55] The EPA determined that Nebraska made incorrect assumptions about Gerald Gentleman Station's SO_2 emissions and the capability of certain controls. Nebraska also deviated from the EPA's Cost Control Manual when evaluating costs.[56] The EPA did our own evaluation in accordance with the Cost Control Manual and found that the cost per ton of SO_2 controls ranged from $1,972 to $2,310 for each Gerald Gentleman Station unit.[57] The EPA determined that the costs for control were reasonable and visibility improvement was significant and disapproved Nebraska's SO_2 BART determination for Gerald Gentleman Station.[58] The EPA's partial disapproval of Nebraska's SIP was upheld by the 8th Circuit and we are not reconsidering that decision in this proposed rulemaking.[59] In 2011 and 2012, neither Nebraska in their SIP submission nor the EPA in its action analyzed whether any control measures beyond BART were necessary to make reasonable progress at the affected Class I areas and thus a part of Nebraska's LTS.

2. EPA's Updated Cost Evaluation

In this action, as the EPA reviewed the LTS requirements under the CAA and its regulations, the EPA evaluated the feasibility and costs of installing several types of SO_2 control systems at Gerald Gentleman Station. Specifically, the EPA has analyzed costs for DSI, spray dry absorber (SDA), and wet FGD. We have looked at each of these control technologies at various control rates to determine which rate/control scenarios are cost effective. The cost evaluation and methodologies are described in detail in the Cost Analysis Technical Support Document (Cost TSD), available in the docket of this proposed action.[60]

In developing cost estimates for the Gerald Gentleman Station units, we relied on the methodologies described in the EPA's Air Pollution Control Cost Manual (the Control Cost Manual, or Manual).[61] To estimate the costs for SDA scrubbers and wet FGD scrubbers, we used the ''Air Pollution Control Cost Estimation Spreadsheet For Wet and Dry Scrubbers for Acid Gas Control'' [62] [63] prepared by EPA's Office of Air Quality Planning and Standards (OAQPS) Air Economics Group following methods in the Cost Control Manual. The methodologies for wet FGD and SDA scrubbers are based on those from EPA's CAMPD Integrated Planning Model (IPM) Model Version 6. To estimate the cost for DSI, we used the 2023 version of the EPA's Retrofit Cost Analyzer (RCA),[64] which is an Excel-based tool that can be used to estimate the cost of building and operating air pollution controls and also employs Version 6 of our IPM model. These cost algorithms calculate the Total Capital Investment (TCI) and Total Annual Direct and Indirect Annual Costs. They also calculate the annualized costs per ton of SO_2 removed ($/ton).

The EPA evaluated the cost of DSI using the default RCA cost models based on 2021 dollars. In order to maintain consistency with other cost numbers presented in this proposal, we escalated these costs to the most recent year (2022) dollars.[65] We used the RCA Tool [66] to analyze the cost of DSI at Gerald Gentleman Station for SO_2 emission rates of 0.10 lb/MMBtu and 0.30 lb/MMBtu. We chose these rates based on documentation from the RCA tool. The tool does not recommend application of DSI for SO_2 emission rates below 0.10 lb/MMBtu without unit specific analysis, and we are absent site-specific information for Gerald Gentleman Station.[67] As discussed in more detail in the Cost TSD (appendix A), we are not able to find information showing that any coal-fired units in the U.S. are currently achieving the 0.06 lb/MMBtu rate and 0.04 lb/MMBtu rate we reviewed for the other control options, with the use of DSI alone.

The corresponding DSI control efficiency rates at Gerald Gentleman Station Unit 1 for 0.30 lb/MMBtu and 0.10 lb/MMBtu was 52 and 84 percent SO_2 removal, while Unit 2 had corresponding control rates of 53 and 84 percent, respectively, for SO_2 removal.[68] The slight difference in control efficiency at the 0.3 lb/MMBtu rate is due to differences in the utilization of the two units over the time period analyzed (2018–2022). A summary of our DSI cost analysis is shown in table 1. We conclude DSI is cost-effective at

[51] 77 FR 12770 at 12779.

[52] Id.

[53] 77 FR 12770 at 12780.

[54] Id.

[55] Id.

[56] Id.

[57] Id. This analysis and determination were conducted consistent with previous actions where cost of control analyses were submitted with deviations from the Control Cost Manual. 77 FR 12770 (March 2, 2012); 77 FR 40149 (July 6, 2012); 79 FR 74817 (December 26, 2014); 81 FR 295 (January 5, 2016).

[58] Id.; 77 FR 40149.

[59] *State of Nebraska* v. *EPA*, 812 F.3d 662 (8th Cir. 2015).

[60] The use of the IPM cost model is consistent with the other EPA Regional Haze actions and is based on reliable and accurate technical tools widely utilized by the EPA to assess control scenarios at electric generating units and other large sources.

[61] The EPA Air Pollution Control Cost Manual, Seventh Edition, April 2021, downloaded from *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

[62] IPM Model—Updates to Cost and Performance for APC Technologies, SDA FGD Cost Development Methodology, Final January 2017, Project 13527–001, Eastern Research Group, Inc., Prepared by Sargent & Lundy. Downloaded from *https://www.epa.gov/system/files/documents/2023-03/Attachment%205-2%20SDA%20FGD%20Cost%20Development%20Methodology.pdf* and *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

[63] IPM Model—Updates to Cost and Performance for APC Technologies, Wet FGD Cost Development Methodology, Final January 2017, Project 13527–001, Eastern Research Group, Inc., Prepared by Sargent & Lundy. Downloaded from *https://www.epa.gov/system/files/documents/2023-03/Attachment%205-1%20Wet%20FGD%20Cost%20Development%20Methodology.pdf* and *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

[64] IPM Model—Updates to Cost and Performance for APC Technologies, Dry Sorbent Injection for SO_2/HCl Control Cost Development Methodology, Final March 2023, Project 13527–002, Eastern Research Group, Inc., Prepared by Sargent & Lundy. Downloaded from *https://www.epa.gov/system/files/documents/2023-04/13527-002%20DSI%20Cost%20Methodology_Final_2023.pdf* and *https://www.epa.gov/power-sector-modeling/retrofit-cost-analyzer.*

[65] Ibid., p.4: ''The data was converted to 2021 dollars based on an escalation factor of 2.5% based on the industry trends over the last ten years (2010–2020) excluding the current market conditions. To escalate prices from January 2021 to July 2022 costs, an escalation factor of 19.5% should be used, based on the Handy Whitman steam production plant index.''

[66]

[67] IPM Model—Updates to Cost and Performance for APC Technologies, Dry Sorbent Injection for SO_2/HCl Control Cost Development Methodology, Final March 2023, Project 13527–002, Eastern Research Group, Inc, Prepared by Sargent & Lundy, p.1–2.

[68] The 52–53 percent rate for DSI was selected based on easily achieved known operating performance of installed DSI systems. The 84 percent rate for DSI was selected based on the use of milled trona along with a baghouse. Both Gerald Gentleman Station units have baghouses installed.

$2,491/ton and $2,486/ton for Unit 1 and Unit 2, respectively at the 0.10 lb/MMBtu rate analyzed.[69] We invite comment on the feasibility and cost-effectiveness of the control efficiencies and emission rate used for DSI at Gerald Gentleman Station, supported by evidence.

TABLE 1—DSI COSTS

Unit	Control	Removal efficiency (90%)	Controlled SO_2 rate (lb/MMBtu)	2022$ Cost effectiveness (/ton)
GERALD GENTLEMAN STATION Unit 1	DSI (milled trona)	52	0.30	$2,383
	w/BGH	84	0.10	$2,491
GERALD GENTLEMAN STATION Unit 2	DSI (milled trona)	53	0.30	$2,362
	w/BGH	84	0.10	$2,486

As previously mentioned, we used the ''Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control,'' to estimate the cost of SDA scrubbers. This is an Excel-based tool that can be used to estimate the costs for installing and operating scrubbers for reducing SO_2 and acidic gas emissions from fossil fuel-fired combustion units and other industrial sources of acid gases.[70] The size and costs of SDA scrubbers are based primarily on the size of the combustion unit and the sulfur content of the coal burned. The calculation methodologies used in the ''Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control'' are consistent with those presented in the U.S. EPA's Air Pollution Control Cost Manual. The ''Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control'' employs version 6 of our IPM model.[71] The cost models used in IPM version 6 were based on 2016 dollars. In performing the cost calculations in this action,[72] we have escalated the costs to 2022 dollars. The ''Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control'' allows the user to enter a different dollar-year for costs and the corresponding cost index if a different dollar-year is desired. Using this capability, we entered the 2022 Chemical Engineering Plant Cost Index (CEPCI) [73] into the spreadsheet to estimate the cost of SDA scrubbers in 2022 dollars.

We evaluated the cost of SDA using a control efficiency rate of 90 and 91 percent SO_2 removal at Gerald Gentleman Station Units 1 and 2, corresponding to an SO_2 emission rate of 0.06 lb/MMBtu at both Units. The EPA analyzed the cost of SDA scrubbers using this removal rate and emission limit because the lowest available SO_2 emission guarantees from original equipment manufacturers of SDA systems are 0.06 lb/MMBtu. A summary of our SDA scrubber cost analysis is shown in table 2. We conclude SDA scrubbers are cost-effective at $4,073/ton and $4,002/ton for Unit 1 and Unit 2, respectively at the 0.06 lb/MMBtu rate analyzed.[74]

TABLE 2—SDA COSTS

Unit	Control	Removal efficiency (%)	Controlled SO_2 Rate (lb/MMBtu)	2022$ Cost effectiveness (/ton)
GERALD GENTLEMAN STATION Unit 1	SDA	90	0.06	$4,073
GERALD GENTLEMAN STATION Unit 2	SDA	91	0.06	4,002

The cost of a baghouse to collect the particles from the operation of the SDA scrubbers was not included in our cost estimate because Gerald Gentleman Station currently operates a baghouse on both units. The EPA invites comment on the feasibility and cost-effectiveness of a higher control efficiency, and lower emission rate, using dry scrubbing at Gerald Gentleman, supported by evidence.

We also evaluated the cost of a wet FGD at Gerald Gentleman Station Units 1 and 2. The size and costs of wet FGD scrubbers are based primarily on the size of the combustion unit and the sulfur content of the coal burned. The wet FGD scrubber cost methodology includes cost algorithms for capital and operating cost for wastewater treatment consisting of chemical pretreatment, low hydraulic residence time biological reduction, and ultrafiltration to treat wastewater generated by the wet FGD system.[75]

Similar to our SDA analysis and approach, the cost models used in IPM version 6 were based on 2016 dollars and we escalated the costs to 2022

[69] The EPA recently proposed a BART FIP for Texas that references past BART decisions, specifically that several controls were required by either the EPA or States as BART with average cost-effectiveness values in the $4,200 to $5,100/ton range (escalated to 2020 dollars). In 2022 dollars, this range is $5,700/ton to $7,000/ton. See 88 FR 28918, 28963. For 2020 the CEPCI value is 596.2. For 2022 the CEPCI value 816.0.

[70] Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control, U.S. Environmental Protection Agency, Air Economics Group, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards (January 2023), downloaded from *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.*

[71] Documentation for EPA's Power Sector Modeling Platform v6 Using the Integrated Planning Model, dated March 2023. Documentation for v6 downloaded from *https://www.epa.gov/power-sector-modeling/documentation-post-ira-2022-reference-case.*

[72] Spreadsheets containing our cost calculations are located in our Docket.

[73] *http://www.chemengonline.com/pci-home.*

[74] The EPA recently proposed a BART FIP for Texas that references past BART decisions, specifically that several controls were required by either the EPA or States as BART with average cost-effectiveness values in the $4,200 to $5,100/ton range (escalated to 2020 dollars). In 2022 dollars, this range is $5,700/ton to $7,000/ton. See 88 FR 28918, 28963. For 2020 the CEPCI value is 596.2. For 2022 the CEPCI value 816.0.

[75] The methodologies had not been updated to incorporate the May 9, 2024 Steam Electric Power Generation Effluent Limitation Guidelines and Standards.

dollars to estimate the cost of wet FGD scrubbers in 2022 dollars. As shown in table 3, the EPA used SO_2 control efficiencies of 90–91 percent and 94 percent corresponding to emission rates of 0.06 and 0.04 lb/MMBtu, respectively.[76] We conclude wet FGD are cost-effective at $4,283/ton and $4,145/ton for Unit 1 at 90% and 94% SO_2 removal rate (respectively) and $4,267/ton and $4,132/ton for Unit 2 at 91% and 94% SO_2 removal rate (respectively).

TABLE 3—WET FGD COSTS

Unit	Control	Removal efficiency (%)	Controlled SO_2 Rate (lb/MMBtu)	2022$ Cost effectiveness (/ton)
GERALD GENTLEMAN STATION Unit 1	Wet FGD	90	0.06	$4,283
		94	0.04	4,145
GERALD GENTLEMAN STATION Unit 2	Wet FGD	91	0.06	4,267
		94	0.04	4,132

We acknowledge that the remaining useful life affects the cost effectiveness estimates for the control technologies analyzed in this section. As discussed in more detail in appendix A of the TSD, available in the docket of this proposal, and in section IV.A.4. below, the EPA has used 30 years as the remaining useful life of the units and any new controls installed on them. The EPA believes that even if the remaining useful life of the units is as short as 20 years, the proposed control rate and associated control technologies are still cost effective.

Based on our assessment, we are concluding that cost effective controls of SO_2 are available using DSI, SDA scrubbers and wet FGD scrubbers.

B. Factor 2—The Time Necessary for Compliance

The EPA believes five years is the appropriate time period for installation of wet FGD or SDA except where there are unusual circumstances. Five years for installation is consistent with our experience regarding FGD installations at power plants generally. In response to a section 114 information request, NPPD submitted several documents that demonstrate that between 2009 and 2014, NPPD considered installing wet FGD controls on Gerald Gentleman Station Units 1 and 2.[77] The engineering documents and requests for bids from this process included a timeline of five years from design to completion. The EPA believes this is an appropriate timeframe for installation of wet FGD controls at Gerald Gentleman Station. We believe that SDA could be installed within the same timeframe. DSI may be able to be installed in a time frame of two to three years. This is consistent with the previous EPA actions.[78]

C. Factor 3—The Energy and Non-Air Quality Environmental Impacts of Compliance

The Guidance for Setting Reasonable Progress Goals under the Regional Haze Program advises, ''In assessing energy impacts, you may want to consider whether the energy requirements associated with a control technology result in energy penalties.'' ''To the extent that these considerations are quantifiable they should be included in the engineering analyses supporting compliance cost estimates'', and to consult the BART Guidelines.[79] To analyze energy impacts, the BART Guidelines advise, ''You should examine the energy requirements of the control technology and determine whether the use of that technology results in energy penalties or benefits.'' [80] As discussed above in our cost analyses for DSI, SDA, and wet FGD, our cost model allows for the cost of additional auxiliary power required for pollution controls to be included in the variable operating costs. The EPA chose to include this additional auxiliary power in all cases. Further, the cost of electricity is negligible compared to the capacity of Gerald Gentleman Station and the grid as a whole. For WFGD, the cost of electricity is approximately 1.25% of energy output. For SDA, the cost of electricity is approximately 1.32% of energy output. For DSI, the cost of electricity is 0.28% of energy output. Consequently, we believe that any energy impacts of compliance have been adequately considered in our analyses.

The Guidance for Setting Reasonable Progress Goals under the Regional Haze Program also advises the consideration of ''the effects of the waste stream that may be generated by a particular control technology, and/or other resource consumption rates such as water, water supply, and wastewater disposal. To the extent that these considerations are quantifiable, they should also be included in the analyses supporting compliance cost estimates'' and to also consult the BART Guidelines for additional guidance on applying this factor to stationary sources.[81] Regarding the analysis of non-air quality environmental impacts, the BART Guidelines advise ''Such environmental impacts include solid or hazardous waste generation and discharges of polluted water from a control device. You should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or elimination of a control alternative. Some control technologies may have potentially significant secondary environmental impacts. Scrubber effluent, for example, may affect water quality or land use. Alternatively, water availability may affect the feasibility

[76] The EPA analyzed the cost of wet scrubbers based on limits of 0.04 and at 0.06 lb/MMBtu. The first analysis at 0.04 lb/MMBtu evaluates wet FGD which is the lowest rate that vendors of the technology will guarantee. The IPM presumptive control model uses a removal efficiency of 98 percent. Because a 98 percent removal efficiency results in SO_2 rates less than 0.04 lb/MMBtu for the Gerald Gentleman Station units, we limited the control efficiency in the cost algorithm to just under 94 percent to assure that NPPD can obtain a performance guarantee for the wet scrubber. The second analysis allows direct comparison to SDA at similar reduction efficiencies of 90- 91 percent.

[77] *See* NPPD CAA section 114 Response: NPPDRH114_0000892, NPPDRH114_0001321, NPPDRH114_0001584, NPPDRH114_0002059, NPPDRH114_0005017.

[78] See 76 FR 81729, 81758 (December 28, 2011) and 81 FR 66332, 66416 (September 27, 2016), where we promulgated regional haze FIPs for Oklahoma and Arkansas, respectively. These FIPs required BART SO_2 emission limits on coal-fired EGUs based on new scrubber retrofits with a compliance date of no later than five years from the effective date of the final rule. Also see 88 FR 28918 (May 4, 2023), where we proposed BART SO_2 emission limits with a compliance date not later than three years or DSI and five years for wet FDG.

[79] *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,* June 1, 2007, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20070601_wehrum_reasonable_progress_goals_reghaze.pdf.*

[80] 70 FR 39168 (July 6, 2005).

[81] Id.

and costs of wet FGD. Other examples of secondary environmental impacts could include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist, or when the incremental emission reductions potential of the more stringent control is only marginally greater than the next most-effective option. However, the fact that a control device creates liquid and solid waste that must be disposed of does not necessarily argue against selection of that technology as BART, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste is similar to those other applications. On the other hand, where you or the source owner can show that unusual circumstances at the proposed facility create greater problems than experienced elsewhere, this may provide a basis for the elimination of that control alternative as BART.'' [82]

The SO_2 control technologies the EPA considered in our analyses—DSI, SDA, and wet FGD—are in wide use in the coal-fired electricity generation industry. All three technologies would add spent reagent to the waste stream already generated by Gerald Gentleman Station, but do not present any unusual environmental waste impacts. In the case of DSI, the use of sodium-based sorbents makes fly ash unsaleable. The EPA has calculated that this would result in revenue loss of approximately $0.07/MWh ($1/ton fly ash estimate converted to $/MWh) and additional disposal costs of approximately $2/MWh. As discussed in our cost analyses for DSI, SDA, and wet FGD, our cost model includes waste disposal costs in the variable operating costs.

Non-air environmental impacts may also take into account water use to operate to the SO_2 controls evaluated, in particular wet FGD scrubbers. While the cost of incorporating a wastewater treatment facility at Gerald Gentleman Station is factored into our cost analysis for Wet FGD, we recognize water quality concerns associated with the waste stream for wet FGD as compared to the installation of SDA scrubbers and DSI. The wet FGD scrubber methodology includes cost algorithms for capital and operating cost for wastewater treatment consisting of chemical pretreatment, low hydraulic residence time biological reduction, and ultrafiltration to treat wastewater generated by the wet FGD system. The calculation methodologies used in the ''Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control,'' are those presented in the U.S. EPA's Air Pollution Control Cost Manual.

The cost algorithm used in the ''Air Pollution Control Cost Estimation Spreadsheet for Wet and Dry Scrubbers for Acid Gas Control'' calculates the Total Capital Investment, Direct Annual Cost, and Indirect Annual Cost. The Total Capital Investment for wet FGD is a function of the absorber island capital costs, reagent preparation equipment costs, waste handling equipment costs, balance of plant costs, and wastewater treatment facility costs.

Regarding water related impacts, we recognize that wet FGD requires additional amounts of water as compared to SDA and DSI. Furthermore, based on Effluent Limitation Guidelines (ELG), it is expected that all future wet FGD installations will require the facility to incorporate a wastewater treatment facility.[83] While this cost is factored into our cost analysis, it also highlights water quality concerns associated with the waste stream for wet FGD as compared to the installation of dry scrubbers and DSI.

Gerald Gentleman Station is located in western Nebraska, a semi-arid region dominated by agriculture. While we are aware of water availability concerns in the area surrounding Gerald Gentleman Station, we believe water resources are available to operate all control technologies evaluated in our cost analysis. This is based on Nebraska's Regional Haze SIP, the record for our previous actions on Nebraska's SIP, and information obtained from NPPD in 2017, which contain extensive information about water availability in the area of Gerald Gentleman Station. In our 2012 action, the EPA found that the cost of purchasing additional water at $234 per ton of SO_2 and that this cost was reasonable.[84]

D. Factor 4—The Remaining Useful Life of the Source

The Guidance for Setting Reasonable Progress Goals under the Regional Haze Program advises, ''If the remaining useful life of the source will clearly exceed'' the standard time period listed in the EPA Air Pollution Control Cost Manual, ''the remaining useful life factor has essentially no effect on control costs and on the reasonable progress determination process. Where the remaining useful life of the source is less than the time period for amortizing the costs of the retrofit control, you may wish to use this shorter time period in your cost calculations. For additional guidance on applying this factor to stationary sources, you may wish to consult the BART Guidelines''.[85] Regarding the analysis of remaining useful life, the BART Guidelines advise ''The ''remaining useful life'' of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's OAQPS Control Cost Manual requires the use of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life essentially has no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use the shorter time period in your cost calculations.'' [86]

In determining the cost of scrubbers in the original SIP submission, Nebraska did not provide a specific useful life for the Gerald Gentleman Station.[87] NPPD also did not provide additional insight regarding the remaining useful life of the Gerald Gentleman Station in their section 114 response from 2016. Therefore, in line with the EPA's approach in prior actions,[88] we used 30 years in the cost module of the IPM model when calculating costs for scrubber controls at the Gerald Gentleman Station in this action.

Similarly, the EPA sees no reason to assume that a DSI system installation, which is a much less complex and costly (capital costs, as opposed to annualized costs) technology in comparison to a scrubber installation, should have a shorter lifetime. As with a wet FGD or SDA, we expect the boiler to be the limiting factor when considering the lifetime of a coal-fired power plant. The EPA has therefore

[82] 70 FR 39169 (July 6, 2005).

[83] IPM Model—Updates to Cost and Performance for APC Technologies, Wet FGD Cost Development Methodology, Final January 2017, Project 13527–001, Eastern Research Group, Inc., Prepared by Sargent & Lundy, p. 1. This Model is prior to the May 9, 2024 Steam Electric Power Generation Effluent Limitation Guidelines and Standards.

[84] 77 FR 33642 (June 7, 2012). Note we are not using this number in our current cost analysis.

[85] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, June 1, 2007.

[86] 70 FR 39168 (July 6, 2005).

[87] ''The useful remaining life of Gerald Gentleman Station Units 1 and 2 is greater than 20 years under the current NPPD energy resource plan. Therefore, the remaining useful life has no impact on the annualized estimated control technology cost at this time.'' Nebraska Regional Haze SIP, section 10.6.4.9.

[88] See 76 FR 52388 (August 22, 2011); 76 FR 81728 (December 28, 2011); *Oklahoma* v. *EPA,* 723 F.3d 1201 (July 19, 2013), cert. denied (U.S. May 27, 2014).

similarly assumed that the lifetime of a DSI system is 30 years.

When considering the remaining useful life of a source, we must consider the useful life of any additional controls we could require and the remaining useful life of the source itself. All the examined control options have useful lives of 30 years, therefore, we propose to conclude that Units 1 and 2 have a remaining useful life of 30 years. In the NPPD 2023 Integrated Resource Plan, NPPD analyzed several continued operation scenarios. In the ''SD–05'' scenario, Gerald Gentleman Station continues to operate as is until at least 2050.[89] While NPPD has indicated a possible shortening of its EGUs' lifespans, including Gerald Gentleman Station, NPPD has also indicated continued operation of Gerald Gentleman Station. Without a federally enforceable shutdown included in the SIP, the EPA must conclude that NPPD will continue operating Gerald Gentleman Station and must use the 30-year lifetime in the EPA cost analyses.

E. Evaluation of Potential Visibility Impacts and Improvements

Although visibility is not a required element of the four-factor analysis, we reviewed the visibility information from the original Nebraska Regional Haze SIP record to verify the impacts of Gerald Gentleman Station on the nearest Class I areas of Badlands, Wind Cave, and Rocky Mountain National Parks. In addition, we provide an updated meteorological back-trajectory analysis on the 20% most impaired monitored days for the period from 2008 through 2021 at Badlands, Wind Cave and Rocky Mountain Class I areas in our Analysis and Modeling TSD, which is included in the docket. In this back-trajectory analysis, we run 72-hour HYSPLIT model back-trajectories originating at Class I area at three different height levels (100 meters, 500 meters and 1,000 meters). We created composite HYSPLIT density plots for multi-year periods and the plots show a consistent pattern of the air mass over or near the location of Gerald Gentleman Station on the 20% most impaired days for the Badlands and Wind Cave Class I areas. We also generated daily back trajectory plots accompanied by plots of Gerald Gentleman Station SO_2 emissions data and show that Gerald Gentleman Station was operating and emitting SO_2 on, or leading up to, the most impaired days when back trajectories traveled near Gerald Gentleman Station.

In summary, we confirmed the CENRAP and Nebraska CALPUFF modeling associated with Nebraska's first planning period SIP, and our updated back-trajectory analysis shows that Gerald Gentleman Station likely impacts the visibility at the affected Class I areas. Please see our Analysis and Modeling TSD for the detailed analysis linking emissions from Gerald Gentleman Station to visibility impairment at nearby Class I areas.

Both the CENRAP and WRAP CAMx modeling and BART CALPUFF modeling relied upon in the Nebraska's first planning period SIP indicate a visibility improvement with the installation of SO_2 controls at Gerald Gentleman Station. The projected 2018 modeling shows improvements in the visibility impairment contribution from Nebraska elevated sources at Badlands due to decreases in emissions from the SO_2 BART controls assumed at Gerald Gentleman Station in the modeling. CALPUFF modeling with either wet FGD or DSI at a control rate of 0.15 lb/MMBtu produced significant visibility improvements at the two South Dakota Class I areas and Rocky Mountain National Park when averaged over the 2001–2003 modeling period. All control options with this level of control rate or lower will achieve significant emission reductions and visibility improvements, with lower control rates (*i.e.,* below the modeled 0.15 lb/MMBtu) leading to greater visibility improvement.

Therefore, although visibility is not a required element of the four-factor analysis, we propose to conclude there will be significant visibility benefit to the Class I areas as a result of installation of cost-effective SO_2 controls at Gerald Gentleman Station.

VI. Amending the FIP on Remand—Long-Term Strategy Determination for Gerald Gentleman Station

In light of the significant emission reductions achieved by a 0.06 lb/MMBtu SO_2 emission limit, leading to significant visibility improvements, the proven ability of both FGD and SDA to achieve a rate of 0.06 lb/MMBtu SO_2 consistently over a long period of time, the controls being cost effective, the ability to reasonably obtain water to operate controls, the lower amount of wastewater generated, and the lack of certainty surrounding DSI being able to achieve the proposed limit at Gerald Gentlemen Station, to address the remand for LTS for SO_2 at Gerald Gentleman Station, the EPA is proposing that Gerald Gentleman Station Unit 1 and Unit 2 meet an SO_2 emission limit of 0.06 lb/MMBtu averaged over a rolling 30 boiler-operating-day period for each unit.[90]

Further, the EPA notes that all SO_2 control technologies analyzed in this action are cost effective at all analyzed control percentages. While a 0.06 lb/MMBtu SO_2 limit would achieve a high level of visibility improvement, the EPA nonetheless acknowledges that all the emission control technologies evaluated in this action will reduce SO_2 emissions, thus resulting in improved visibility at the affected Class I areas.

The EPA also notes that all the SO_2 control technologies discussed in this action can be installed within 5 years and DSI can be installed as quickly as two years. Therefore, the time necessary for compliance for all emission rates can be considered equivalent and reasonable.

In considering the relevant energy and nonair environmental concerns, the cost of electricity is negligible compared to the capacity of Gerald Gentleman Station and the grid as a whole, as included in our cost analysis. Additionally, more waste will be generated but not at a rate that would be considered unusual or unreasonable. The EPA notes that DSI and SDA generate less wastewater than wet FDG, for the same emission limit. Finally, while there is water scarcity in the region, NPPD has access to water to operate the controls and water costs are included in our cost analysis.

The EPA also proposes to find that there are no permanent and enforceable limitations on the continued operation of Gerald Gentleman Station. The EPA is therefore proposing that the remaining useful life of the source is at least thirty years.

Therefore, we also invite comment on all the control technologies and other emission limits analyzed within this action. The EPA is choosing to propose an SO_2 emission limit of 0.06 lb/MMBtu based on multiple factors outlined at the beginning of this section. This limit was selected based on the operation of SDA. We find SDA can meet the 0.06 lb/MMBtu limit at a reasonable, cost-effective level and will result in large emissions reductions and visibility improvements with less water usage and wastewater than wet FGD. As discussed in more detail in the Cost TSD (Appendix A), we are not able to find information showing that any coal-fired units in the U.S. are currently meeting the 0.06 lb/MMBtu rate limit proposed in this action with the use of DSI alone.

[89] See ''*NPPD2023IntergratedResourcePlan.pdf*'' in the docket for this action.

[90] A boiler operating day is any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

Therefore, we do not have a sufficient basis to conclude that DSI can be used to meet a 0.06 lb/MMBtu limit at Gerald Gentleman Station. However, the EPA's analysis shows that NPPD can achieve this emission rate utilizing SDA or wet FGD technology, both of which are cost-effective based on the EPA's analysis outlined throughout this action. Therefore, rather than proposing a specific control technology, the EPA believes it is appropriate to only propose an emission limit because it may be possible to meet the proposed limit with SDA or FGD. As stated above, we do not have sufficient information to determine whether DSI can meet this limit on a consistent, long-term basis. By proposing a limit only, the EPA is providing the source with greater flexibility to select the control technology that best meets its needs while also providing emissions reductions which will result in visibility benefits at the affected Class I areas.

VII. The EPA's FLM Consultation

The EPA consulted with the FLMs (specifically, U.S. Fish and Wildlife Service, U.S. Forest Service, and the National Park Service) on April 23, 2024 to May 10, 2024. During the consultation we provided an overview of our proposed actions and drafts of our technical support documents. The FLMs signaled general support for our action.

VIII. Proposed Action

Based on the EPA's review of the LTS requirements along with its analysis of the four statutory factors, the EPA proposes that NPPD Gerald Gentleman Station Unit 1 and Unit 2 each meet an emission limit of 0.06 lb/MMBtu averaged over a rolling 30 boiler-operating-day period. This emission limit would apply at all times, including periods of startup and shut down. We are also taking comment on the other control technologies and emissions limits analyzed in this action.

IX. Environmental Justice Considerations

This section summarizes environmental justice data for areas that would be impacted by this proposed action and is intended for informational and transparency purposes only. Whereas, environmental justice data is not a key determinate for this action, the CAA and applicable implementing regulations neither prohibit nor require an evaluation of environmental justice. This action is perceived to have a positive benefit on environmental justice areas. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [91] Recognizing the importance of these considerations to local communities, the EPA conducted an environmental justice screening analysis around the location of Gerald Gentleman Station to identify potential environmental stressors on these communities and the potential impacts of this action. However, the EPA is providing the information associated with this analysis for informational purposes only. The information provided herein is not a basis of the proposed action. The EPA conducted the screening analyses using EJScreen, an EJ mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[92] The EJScreen tool presents these indicators at a Census block group (CBG) level or a larger user specified ''buffer'' area that covers multiple CBGs.[93] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJScreen is not a tool for performing in depth risk analysis, but is instead a screening tool that provides an initial representation of indicators related to EJ and is subject to uncertainty in some underlying data (*e.g.,* some environmental indicators are based on monitoring data which are not uniformly available; others are based on self-reported data).[94] EJScreen environmental indicators help screen for locations where residents may experience a higher overall pollution burden than would be expected for a block group with the same total population in the U.S. These indicators of overall pollution burden include estimates of ambient particulate matter ($PM_{2.5}$) and ozone concentration, a score for traffic proximity and volume, percentage of pre-1960 housing units (lead paint indicator), and scores for proximity to Superfund sites, risk management plan (RMP) sites, and hazardous waste facilities.[95] EJScreen also provides information on demographic indicators, including percent low-income, communities of color, linguistic isolation, and less than high school education. The EPA prepared an EJScreen report covering a buffer area of approximately 6-mile radius around Gerald Gentleman Station. From this report, no EJ indices were greater than the 80th national percentiles.[96] The full, detailed EJScreen report is provided in the docket for this rulemaking. This action is proposing to promulgate a FIP to address LTS requirements that are not adequately satisfied by the Nebraska Regional Haze SIP. The proposed rule is proposing SO_2 limits on Gerald Gentleman Station in Nebraska to fulfill regional haze program requirements. Exposure to SO_2 is associated with significant public health effects. Short-term exposures to SO_2 can harm the human respiratory system and make breathing difficult. People with asthma, particularly children, are sensitive to these effects of SO_2.[97] Therefore, we expect that these requirements for Gerald Gentleman Station in Nebraska, if finalized, and resulting emissions reductions will contribute to reduced environmental and health impacts on all populations impacted by emissions from these sources, including populations experiencing a higher overall pollution burden, people of color and low-income populations. There is nothing in the record which indicates that this proposed action, if finalized, would have disproportionately high or adverse human health or environmental effects

[91] See *https://www.epa.gov/environmentaljustice/learn-about-environmentaljustice.*

[92] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[93] See *https://www.census.gov/programssurveys/geography/about/glossary.html.*

[94] In addition, EJSCREEN relies on the five-year block group estimates from the U.S. Census American Community Survey. The advantage of using five-year over single-year estimates is increased statistical reliability of the data (*i.e.,* lower sampling error), particularly for small geographic areas and population groups. For more information, see *https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf.*

[95] For additional information on environmental indicators and proximity scores in EJSCREEN, see ''EJSCREEN Environmental Justice Mapping and Screening Tool: EJSCREEN Technical Documentation,'' Chapter 3 and Appendix C (September 2019) at *https://www.epa.gov/sites/default/files/2021-04/documents/ejscreen_technical_document.pdf.*

[96] For a place at the 80th percentile nationwide, that means 20% of the U.S. population has a higher value. The EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreen results. The use of an initial filter promotes consistency for the EPA programs and regions when interpreting screening results.

[97] See *https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects.*

on communities with environmental justice concerns.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866, as amended by Executive Order 14094, because it is not a ''significant regulatory action'' under the terms of Executive Order 12866 [98] and is therefore not subject to review under Executive Orders 12866 and 14094.[99] The proposed FIP only applies to one facility. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act because it is not a rule of general applicability and affects fewer than 10 entities. See 5 CFR 1320(c).

C. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. Nebraska Public Power District is not a small entity.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The EPA has determined that Title II of UMRA does not apply to this proposed rule. In 2 U.S.C. 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. 658, which further provides that the terms ''regulation'' and ''rule'' have the meanings set forth in 5 U.S.C. 601(2). Under 5 U.S.C. 601(2), ''the term 'rule' does not include a rule of particular applicability relating to . . . facilities.'' Because this proposed rule is a rule of particular applicability relating to specific EGUs located at one named facility, the EPA has determined that it is not a ''rule'' for the purposes of Title II of UMRA.

E. 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. This proposed rule does not impose significant economic costs on state or local governments. Thus, Executive Order 13132 does not apply to this proposed action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action applies to one facility in Nebraska and will affect Federal Class I areas in South Dakota and Colorado. This action does not apply on any Indian reservation land or any other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian county. Thus Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: Protection from Environmental Health Risks and Safety Risks applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate risk to children. Moreover, ''regulation'' or ''rule'' is defined in Executive Order 12866 as ''an agency statement of general applicability and future effect.'' E.O. 12866 does not define ''statement of general applicability'' but this term commonly refers to statements that apply to groups or classes, as opposed to statements which apply only to named entities. The proposed FIP, therefore, is not a rule of general applicability because its requirements apply and are tailored to only one individually identified facility. Thus it is not a ''rule'' or ''regulation'' within in the meaning of E.O. 12866. However, as this action will limit emissions of SO_2, it will have a beneficial effect on children's health by reducing air pollution.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This proposed action involves technical standards. Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to us available and applicable voluntary consensus standards. This proposed rule would require the affected facility to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, the EPA is not recommending any revisions to part 75; however, the EPA periodically revises the test procedures set forth in part 75. When the EPA revises the test procedures set forth in part 75 in the future, the EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, the EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

[98] 58 FR 51735 (October 4, 1993).

[99] 88 FR 21879 (April 11, 2023).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the human health and environmental conditions, around Gerald Gentelman Station, that exist prior to this action do not result in disproportionate and adverse effects on communities with Environmental Justice concerns.

The EPA believes that this action is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. This proposed FIP limits emissions of SO_2 from one facility in Nebraska.

The information supporting this Executive Order review is contained in Section IX Environmental Justice Considerations of this action and the file GGS6mileEJScreen Community Report.pdf in the docket for this action.

The EPA believes the human health or environmental risk addressed by this proposed action will not have potential disproportionately high and adverse human health or environmental effects on communities with environmental justice concerns because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any communities with environmental justice concerns.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Visibility.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart CC—Nebraska

■ 2. Amend § 52.1437 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 52.1437 Visibility protection.

* * * * *

(b) *Measures addressing partial disapproval associated with SO_2.* The deficiencies associated with the SO_2 BART determination for NPPD, Gerald Gentleman Station, Units 1 and 2 identified in EPA's partial disapproval of the regional haze plan submitted by Nebraska on July 13, 2011, are satisfied by § 52.1429. The deficiencies associated with the SO_2 LTS addressing SO_2 emissions for NPPD, Gerald Gentleman Station, Units 1 and 2 identified in EPA's partial disapproval of the regional haze plan submitted by Nebraska on July 13, 2011, are satisfied by paragraph (c) of this section.

(c) *Requirements for Gerald Gentleman Station Units 1 and 2 affecting visibility.*

(1) *Applicability.* The provisions of this section shall apply to each owner, operator, or successive owners or operators of the coal burning equipment designated as Gerald Gentleman Station Units 1 and 2.

(2) *Compliance dates.* Compliance with the requirements of this section is required by 5 years from the effective date of this rule for Gerald Gentleman Station Units 1 and 2.

(3) *Definitions.* All terms used in this part but not defined herein shall have the meaning given to them in the Clean Air Act and in parts 51 and 60 of this title. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes baghouses, particulate or gaseous scrubbers, sorbent injection systems, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Boiler-operating-day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in a steam generating unit.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the coal burning equipment designated in paragraph (a) of this section.

Regional Administrator means the Regional Administrator of Region 7 or his/her authorized representative.

Unit means each individual coal-fired boiler covered under paragraph (a) of this section.

(4) *Emissions limitations.* SO_2 emission limit. The owner/operator of the units listed below shall not emit or cause to be emitted pollutants in excess of the following limitations in pounds per million British thermal units (lb/MMBtu) as averaged over a rolling 30 boiler-operating-day period from the subject unit. Compliance with the requirements of this section is required as listed below. The sulfur dioxide (SO_2) emission limit for each individual unit shall be as listed in the following table.

Unit	SO_2 Emission limit (lbs/MMBtu)	Compliance date
Gerald Gentleman Station Unit 1	0.06	Five years from effective date of the final rule.
Gerald Gentleman Station Unit 2	0.06	Five years from effective date of the final rule.

(5) *Testing and monitoring.*

(i) No later than the compliance date of this regulation, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for SO_2, diluent ($\%CO_2$ or $\%O_2$) and flow, for each unit listed in section (1) in accordance with 40 CFR 60.8 and 60.13 (e), (f), and (h), and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. The SO_2, diluent, and flow CEMS data, expressed in units of the standard, shall be used to verify compliance for each unit.

(ii) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each 15-minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventative maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24-hour period and at least 22 out of 30 successive boiler operating days.

(6) *Recordkeeping and reporting requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Regional Administrator required by this section shall be submitted unless instructed otherwise to the Director, Air and Radiation Division, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. For each unit subject to the emissions limitation in this section and upon completion of CEMS as required in this section, the owner or operator shall comply with the following requirements:

(i) The following information shall be reported to the Regional Administrator, EPA Region 7, and the Nebraska Department of Energy and the Environmental, for each boiler operating day. The report shall be submitted no later than 30 days following the end of each semi-annual calendar period (*e.g.,* June 30, December 31).

(ii) For each SO_2 emission limit in paragraph (c)(1) of this section, comply with the notification, reporting, and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7 (c) and (d).

(iii) For each day, provide the total SO_2 emitted that day by each emission unit covered under (c)(1). For any hours on any unit where data for hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(iv) For the unit covered under (c)(2) and (d)(2), records sufficient to demonstrate that the fuel for the unit is pipeline natural gas.

(v) Records for demonstrating compliance with the SO_2 and PM emission limitations in this section shall be maintained for at least five years.

(A) Calendar date.

(B) The average SO_2 emission rates, in lb/MMBtu, for each 30 successive boiler operating day period, ending with the last 30-day period in the semi-annual reporting period; reasons for non-compliance with the emission standards; and, description of corrective actions taken.

(C) Identification of the boiler operating days for which pollutant or diluent data have not been obtained by an approved method for at least 75 percent of the hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken.

(D) Identification of the ''F'' factor used for calculations, method of determination, and type of fuel combusted.

(E) Identification of times when hourly averages have been obtained based on manual sampling methods.

(F) Identification of the times when the pollutant concentration exceeded full span of the CEMS.

(G) Description of any modifications to CEMS which could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 of 40 CFR 60.51, subpart Da.

(7) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including the associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(8) *Enforcement.*

(i) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable implementation plan.

(ii) Emissions in excess of the level of the applicable emission limit or requirement that occur due to startup, shutdown or malfunction shall constitute a violation of the applicable emission limit.

[FR Doc. 2024–16697 Filed 7–31–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2023–0069; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BE77

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination on the Proposed Endangered Species Status for the Toothless Blindcat and the Widemouth Blindcat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determinations of whether to list the toothless blindcat (*Trogloglanis pattersoni*) and the widemouth blindcat (*Satan eurystomus*) as endangered species under the Endangered Species Act of 1973, as amended (Act). We are taking this action based on substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing rule, making it necessary to solicit additional information. Therefore, we are also reopening the comment period on the proposed rule for an additional 30 days. Comments previously submitted need not be resubmitted, as they are already incorporated into the public record and will be fully considered in our final determinations.

DATES: The comment period on the proposed rule that published August 22, 2023, at 88 FR 57046, is reopened. We will accept comments received or postmarked on or before September 3,

2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2023–0069, which is the docket number for the August 22, 2023, proposed rule and this document. Then click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate the correct document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2023–0069, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, TX 78754; telephone 512–937–7371. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R2–ES–2023–0069 on *https://www.regulations.gov* for a document that summarizes the August 22, 2023, proposed rule.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2023, we published a proposed rule (88 FR 57046) to list the toothless blindcat and the widemouth blindcat as endangered species under the Act (16 U.S.C. 1531 *et seq.*). On October 12, 2023, we received a request to extend the proposed rule's public comment period; thus, on December 7, 2023, we published a document (88 FR 85177) reopening the proposed rule's public comment period for an additional 30 days.

Section 4(b)(6) of the Act and its implementing regulations at 50 CFR 424.17(a) require that we take one of three actions within 1 year of publication of a proposed listing: (1) Finalize the proposed rule; (2) withdraw the proposed rule; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination.

Since the August 22, 2023, publication of the proposed rule, there has been ongoing disagreement regarding the interpretation and accuracy of the best available information pertaining to the status of toothless blindcat and widemouth blindcat populations, the species' respective life histories, application of surrogate species, potential extent and use of available habitat, and impact of groundwater well mortality on these species. The substantial nature of this disagreement on the current status of these species became evident during the recently reopened comment period (see 88 FR 85177; December 7, 2023), when differing interpretations of existing information on the two species' biology and habitat use, aquifer dynamics, and specifications and operation of groundwater wells in the City of San Antonio, Texas, were discussed by commenters. There is substantial disagreement regarding the application of mortality estimates applied to groundwater wells to assess fish mortality with alternative modeling approaches recommended. Information was also submitted related to flow dynamics of the Edwards Aquifer and the operational history and engineering specifications of some groundwater wells known to produce toothless blindcats and widemouth blindcats that would reduce probability of well entrainment and expulsion of fish, and thus reduce the probability of mortality of the species.

We find that there is substantial scientific disagreement about certain data relevant to our listing determinations. Therefore, in consideration of this disagreement, we have determined that a 6-month extension of the final determinations for this rulemaking is necessary. We are hereby extending the final determinations for 6 months in order to solicit additional information that will help us clarify these issues and to fully analyze any new data we receive that are relevant to our final listing determinations. With this 6-month extension, the final determinations on the proposed listings of the toothless blindcat and the widemouth blindcat must publish in the **Federal Register** no later than February 22, 2025.

With this document, we reopen the public comment period on the August 22, 2023, proposed rule (88 FR 57046) for an additional 30 days, as specified above in **DATES**.

For a description of previous Federal actions concerning the toothless blindcat and the widemouth blindcat and information on the types of comments that would be helpful to us in making final determinations on our proposal, please refer to the August 22, 2023, proposed rule (88 FR 57046 at 57046–57047).

Information Requested

We will accept written comments and information during this reopened comment period on our August 22, 2023, proposed rule to list the toothless blindcat and widemouth blindcat as endangered species under the Act (88 FR 57046). We will consider information and recommendations from all interested parties. We intend that any final actions resulting from the proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determinations will take into consideration all comments and any additional information we receive during all comment periods on the proposed rule.

Due to the scientific disagreements described above, we are particularly interested in new information and evidence regarding:

(1) Data on the current status, trends, habitat preferences, and life history of toothless blindcat and widemouth blindcat populations.

(2) Modeled quantitative analyses of blindcat population responses to additive mortality in the form of groundwater well expulsion and in relation to aquifer dynamics, groundwater well density, distribution, and operational history, including length-frequency analyses of both species to inform understanding of population dynamics.

(3) Documented life histories of other subterranean catfishes that could better inform understanding of the toothless blindcat's and widemouth blindcat's biology, including population responses to additive mortality.

(4) Potential for the existence of reduced predatory pressure on the toothless blindcat, resulting in increased abundance for that species, as a result of reduced widemouth blindcat numbers. (The widemouth blindcat is hypothesized to be a potential predator

that feeds on suitably sized toothless blindcat individuals).

(5) Information on fish behavioral avoidance of increased water velocities.

(6) For groundwater wells known to produce both blindcats across their ranges, installation and modification history from well establishment to present (*e.g.,* history of artesian versus pumped flow, changes in pump depth, water velocity, designated use(s) over time, and frequency of operation), vertical hydrogeologic conditions, prevalence of groundwater conduits in well capture zone, and related engineering and geological specifications.

(7) Information on current status (*i.e.,* active or inactive), designated use, drill depth, and associated information (*e.g.,* borehole diameters, yields, and vertical hydrogeologic conditions) of other groundwater wells within the immediate area analysis units and the potential area of occurrence, as defined in the species status assessment (Service 2023, pp. 66–67).

(8) Specific documentation for municipal groundwater wells regarding total dynamic head and 50 feet water draw depth, and potential lack of capacity for wells to draw past 50 feet depth.

(9) Genetic analyses of museum specimen tissues and additionally acquired tissue samples to ascertain the toothless blindcat's and widemouth blindcat's current and historical population size and structure, as well as potential for past genetic bottlenecks.

(10) Documentation of the continued presence of either species at known groundwater wells or discovery of the species at additional locations across the San Antonio segment of the Edwards Aquifer.

Because we will consider all comments and information we receive during all open comment periods, our final determinations may differ from our August 22, 2023, proposed rule (88 FR 57046). Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that one or both of the species is threatened instead of endangered, or we may conclude that one or both of the species does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decisions, including why we made changes, if any, that differ from the August 22, 2023, proposal.

If you already submitted comments or information on the August 22, 2023, proposed rule during either of the previous two comment periods, please do not resubmit them. Any such comments are already incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determinations. Our final determinations concerning the proposed listings will take into consideration all written comments and any additional information we receive.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.* Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *https://www.regulations.gov* at FWS–R2–ES–2023–0069.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Gary Frazer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–16749 Filed 7–31–24; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 89, No. 148
Thursday, August 1, 2024

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

Forest Service

Proposed Recreation Fee Site

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Angeles National Forest is proposing to establish a recreation fee site. Proposed recreation fees collected at the proposed recreation fee site would be used for operation, maintenance, and improvement of the site. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the new recreation fee site are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Angeles National Forest, Attention: Recreation Fees, 701 North Santa Anita Avenue, Arcadia, CA 91006.

FOR FURTHER INFORMATION CONTACT: Jeremey Sugden, Recreation Program Manager, (626) 574–5274 or *jeremey.sugden@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of proposed recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee site and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee site.

A proposed expanded amenity recreation fee of $80 per night for groups of up to 36 people and $100 per night for groups of up to 45 people would be charged for Lightning Point Group Campground.

Expenditures of recreation fees collected at the proposed recreation fee site would enhance recreation opportunities, improve customer service, and address maintenance needs. t Reservations for the campground could be made online at *www.recreation.gov* or by calling (877) 444–6777. Reservations would cost $8.00 per reservation.

Dated: July 26, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–16943 Filed 7–31–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Recreation Fee Sites

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Boise National Forest is proposing to establish several recreation fee sites. Proposed recreation fees collected at the proposed recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed recreation fees that would be charged at the new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed recreation fees would be established no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Boise National Forest, Attention: Recreation Fees, 1249 South Vinnell Way, Suite 200, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Everado Santillan, Recreation Program Manager, (208) 373–4100 or *everardo.santillan@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of proposed recreation fee sites. In accordance with Forest Service Handbook 2309.13, Chapter 30, the Forest Service will publish the proposed recreation fee sites and proposed recreation fees in local newspapers and other local publications for public comment. Most of the proposed recreation fees would be spent where they are collected to enhance the visitor experience at the proposed recreation fee sites.

A proposed expanded amenity recreation fee of $10 per night would be charged for Golden Gate, Yellow Pine, Ice Hole, Penn Basin, Picnic Point, Evans Creek, Ice Springs, and Spillway Campgrounds. A proposed expanded amenity recreation fee of $20 per night would be charged for Little Roaring River Lake and Deer Creek Campgrounds. A proposed expanded amenity recreation fee of $40 per night is proposed for double campsites at Deer Creek Campground. A proposed expanded amenity recreation fee of $150 per night for groups of up to 100 people would be charged for Deer Creek Group Campground. In addition, a proposed expanded amenity recreation fee of $100 per night would be charged for rental of Landmark South, Landmark West, and Atlanta Host Cabins, an expanded amenity recreation fee of $80 per night would be charged for rental of the Landmark Forester Cabin, and an expanded amenity recreation fee of $60 per night would be charged for rental of Whitehawk Lookout and Big Trinity Cabin #2.

A proposed standard amenity recreation fee of $5 per day and $30 for an annual pass per vehicle would be charged at French Creek Boat Launch, Deer Creek Boat Launch at Anderson Reservoir, Rainbow Point Boat Launch, Elk Creek Boat Launch, which have the requisite amenities for a standard amenity recreation fee but not for an expanded amenity recreation fee. A proposed standard amenity recreation fee of $5 per day and $30 for an annual pass per vehicle would also be charged for Stack Rock developed recreation site. The Boise National Forest Day Use Pass and the America the Beautiful–the National Parks and Federal Recreational Lands Pass would be honored at these standard amenity recreation fee sites.

Expenditures of recreation fees collected at the proposed recreation fee

sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the proposed recreation fee sites and proposal recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Reservations for the campgrounds, lookout, and cabins could be made online at *www.recreation.gov* or by calling (877) 444–6777. Reservations would cost $8.00 per reservation.

Dated: July 26, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–16869 Filed 7–31–24; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 1 p.m. MT on Monday, August 26, 2024. The purpose of the meeting is to discuss the Committee's project, *The Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System.*

DATES: Monday, August 26, 2024, from 1 p.m.–2:30 p.m. mountain time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_9GLMOD4wRoe_5JOdGT4oiQ.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 301 7192.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via the file sharing website, *www.box.com.* Persons interested in the work of this Committee are directed to the Commission's website, *www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Discussion: Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: July 29, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–16991 Filed 7–31–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Arkansas Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series of public meetings via Zoom. The purpose of this meeting is for the Committee to finalize publication of their report regarding the *Right to Counsel in Arkansas* and discuss any post-report activity plans. This will be the last meeting of the current appointment term.

DATES:

- Monday, October 7, 2024, from 12 p.m.–1 p.m. central time.

ADDRESSES: This meeting will be held via Zoom.

October 7th Meeting:

- *Registration Link (Audio/Visual): https://www.zoomgov.com/meeting/register/vJItceitpz8jG5DcHgKRsoxFRVNh0mRzfzg*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 615 9491#

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration links above. Any interested members of the public may attend these meetings. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at these meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *csanders@usccr.gov* at least 10 business days prior to each meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–618–4158.

Records generated from these meetings may be inspected and reproduced at the Regional Programs

Coordination Unit Office, as they become available, both before and after each meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *csanders@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Chair's Comments
III. Report discussion: Right to Counsel
IV. Public Comment
V. Adjournment

Dated: July 29, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–16992 Filed 7–31–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Colorado Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Colorado Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene a monthly virtual business meeting on Wednesday, August 21, 2024, at 3 p.m. mountain time. The purpose of the meeting is to continue working on its project on public school attendance zones in Colorado.

DATES: Wednesday, August 21, 2024, at 3 p.m. mountain time.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/279fjudv; password: USCCR–CO.

Join by Phone (Audio Only): 1–833 435 1820; Meeting ID: 160 614 2807#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, Designated Federal Official at *bdelaviez@usccr.gov* or 202–376–7700.

SUPPLEMENTARY INFORMATION: These committee meeting is available to the public through the meeting link above. Any interested member of the public may listen to the meeting. At the meeting, an open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meetings. Written comments may be emailed to Barbara Delaviez at *bdelaviez@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meetings. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Colorado Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Report Stage: Public School Attendance Zones
III. Discuss Next Steps
IV. Public Comment
V. Adjournment

Dated: July 29, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–16990 Filed 7–31–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Statement by Ultimate Consignee and Purchaser

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 March 25, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Commerce.

Title: Statement by Ultimate Consignee and Purchaser.

OMB Control Number: 0694–0021.

Form Number(s): BIS–711.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 414.

Average Hours per Response: 16 minutes.

Burden Hours: 110.

Needs and Uses: Sections 4812(b)(7) and 4814(b)(1)(B) of the Export Control Reform Act (ECRA), authorizes the President and the Secretary of Commerce to issue regulations to implement the ECRA including those provisions authorizing the control of exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy and short supply, and the provision prohibiting U.S. persons from participating in certain foreign boycotts.

Export control authority has been assigned directly to the Secretary of Commerce by the ECRA and delegated by the President to the Secretary of Commerce. This authority is administered by the Bureau of Industry and Security through the Export Administration Regulations (EAR). The ECRA is not permanent legislation, and when it has lapsed due to the failure to enact a timely extension, Presidential executive orders under the International Emergency Economic Powers Act

(IEEPA) have directed and authorized the continuation in force of the EAR.

The collection is necessary under part 748.11 of the EAR. This section states that the Form BIS–711, Statement by Ultimate Consignee and Purchaser, or a statement on company letterhead (in accordance with 748.11(b)(1), unless one or more of the exemptions set forth in section 748.11(a)) exists. The BIS–711 or letter provides information on the foreign importer receiving the U.S. technology and how the technology will be utilized. The BIS–711 or letter provides assurances from the importer that the technology will not be misused, transferred or re-exported in violation of the EAR. The form is also required for certain reexport authorizations specified in part 748.12(b) of the EAR.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: EAR Part 748.11.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0021.

Sheleen Dumas,

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

[FR Doc. 2024–16986 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Offsets in Military Exports

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 February 16, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Commerce.

Title: Offsets in Military Exports.

OMB Control Number: 0694–0084.

Form Number(s): BIS–0084.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 30.

Average Hours per Response: 12 hours.

Burden Hours: 360.

Needs and Uses: This collection of information is required by the Defense Production Act (DPA). The DPA requires U.S. firms to furnish information to the Department of Commerce regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries or foreign firms. Offsets are industrial or commercial compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. Such offsets are required by most major trading partners when purchasing U.S. military equipment or defense related items.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Defense Production Act of 1950, Section 309.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0084.

Sheleen Dumas,

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

[FR Doc. 2024–16964 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–153, C–533–918]

Certain Paper Shopping Bags From the People's Republic of China and India: Countervailing Duty Orders; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of July 18, 2024, in which Commerce issued the countervailing duty (CVD) orders on certain paper shopping bags (paper bags) from the People's Republic of China (China) and India. This notice incorrectly listed the all-others rate for the China CVD order as 41.46 percent in the section entitled ''Estimated Countervailable Subsidy Rates.''

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2024, Commerce published in the **Federal Register** its CVD orders on paper bags from China and India.[1] In this notice, Commerce incorrectly listed the all-others rate for the China CVD order as 41.46 percent in the section entitled ''Estimated Countervailable Subsidy Rates.'' [2]

Correction

In the **Federal Register** of July 18, 2024, in FR Doc 2024–15747, on page 58332, in the second column, in the section entitled ''Estimated

[1] *See Certain Paper Shopping Bags From the People's Republic of China: Countervailing Duty Orders,* 89 FR 58331 (July 18, 2024).

[2] *See Certain Paper Shopping Bags from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 89 FR 45829 (May 24, 2024).

Countervailable Subsidy Rates,'' correct the all-others rate shown in the table for China to be 41.56 percent.

Notification to Interested Parties

This notice is issued and published in accordance with sections 706(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.211(b).

Dated: July 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–16890 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping duty (AD) or countervailing duty (CVD) order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that AD or CVD order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating AD rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*i.e.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of August 2024,[2] interested parties may request administrative review of the following

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when Commerce is closed.

orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

Antidumping Duty Proceedings	
CANADA: Utility Scale Wind Towers, A–122–867	8/1/23–7/31/24
GERMANY:	
Seamless Line and Pressure Pipe, A–428–820	8/1/23–7/31/24
Sodium Nitrite, A–428–841	8/1/23–7/31/24
INDIA: Finished Carbon Steel Flanges, A–533–871	8/1/23–7/31/24
INDONESIA: Utility Scale Wind Towers, A–560–833	8/1/23–7/31/24
ITALY: Finished Carbon Steel Flanges, A–475–835	8/1/23–7/31/24
JAPAN:	
Brass Sheet & Strip, A–588–704	8/1/23–7/31/24
Tin Mill Products, A–588–854	8/1/23–7/31/24
MALAYSIA:	
Polyethylene Retail Carrier Bags, A–557–813	8/1/23–7/31/24
Silicon Metal, A–557–820	8/1/23–7/31/24
MEXICO:	
Light-Walled Rectangular Pipe and Tube, A–201–836	8/1/23–7/31/24
Standard Steel Welded Wire Mesh, A–201–853	8/1/23–7/31/24
REPUBLIC OF KOREA:	
Dioctyl Terephthalate, A–580–889	8/1/23–7/31/24
Large Power Transformers, A–580–867	8/1/23–7/31/24
Light-Walled Rectangular Pipe and Tube, A–580–859	8/1/23–7/31/24
Low Melt Polyester Staple Fiber, A–580–895	8/1/23–7/31/24
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A–580–909	8/1/23–7/31/24
Utility Scale Wind Towers, A–580–902	8/1/23–7/31/24
ROMANIA: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–485–805 (Under 4½ Inches)	8/1/23–7/31/24
RUSSIA:	
Certain Cut-to-Length Carbon Steel Plate, A–821–808	8/14/23–7/31/24
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A–821–826	8/1/23–7/31/24
SPAIN:	
Ripe Olives, A–469–817	8/1/23–7/31/24
Utility Scale Wind Towers, A–469–823	8/1/23–7/31/24
SOCIALIST REPUBLIC OF VIETNAM:	
Frozen Fish Fillets, A–552–801	8/1/23–7/31/24
Seamless Refined Copper Pipe and Tube, A–552–831	8/1/23–7/31/24
Utility Scale Wind Towers, A–552–825	8/1/23–7/31/24
TAIWAN: Low Melt Polyester Staple Fiber, A–583–861	8/1/23–7/31/24
THAILAND:	
Polyethylene Retail Carrier Bags, A–549–821	8/1/23–7/31/24
Steel Propane Cylinders, A–549–839	8/1/23–7/31/24
THE PEOPLE'S REPUBLIC OF CHINA:	
Cast Iron Soil Pipe Fittings, A–570–062	8/1/23–7/31/24
Certain Metal Lockers and Parts Thereof, A–570–133	8/1/23–7/31/24
Floor-Standing, Metal-Top Ironing Tables and Parts Thereof, A–570–888	8/1/23–7/31/24
Hydrofluorocarbon Blends and Components Thereof, A–570–028	8/1/23–7/31/24
Laminated Woven Sacks, A–570–916	8/1/23–7/31/24
Light-Walled Rectangular Pipe and Tube, A–570–914	8/1/23–7/31/24
Passenger Vehicle and Light Truck Tires, A–570–016	8/1/23–7/31/24
Petroleum Wax Candles, A–570–504	8/1/23–7/31/24
Polyethylene Retail Carrier Bags, A–570–886	8/1/23–7/31/24
Sodium Nitrite, A–570–925	8/1/23–7/31/24
Stainless Steel Flanges, A–570–064	8/1/23–7/31/24
Steel Nails, A–570–909	8/1/23–7/31/24
Steel Propane Cylinders, A–570–086	8/1/23–7/31/24
Tetrahydrofurfuryl Alcohol, A–570–887	8/1/23–7/31/24
Tow-Behind Lawn Groomers and Parts Thereof, A–570–939	8/1/23–7/31/24
UKRAINE:	
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A–823–819	8/1/23–7/31/24
Silicomanganese, A–823–805	8/1/23–7/31/24
Countervailing Duty Proceedings	
CANADA: Utility Scale Wind Towers, C–122–868	1/1/23–12/31/23
INDIA: Finished Carbon Steel Flanges, C–533–872	1/1/23–12/31/23
MALAYSIA: Utility Scale Wind Towers, C–557–822	1/1/23–12/31/23
REPUBLIC OF KOREA:	
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, C–580–910	1/1/23–12/31/23
Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/23–12/31/23
RUSSIA:	
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, C–821–827	1/1/23–12/31/23
Sodium Nitrite, C–821–837	1/1/23–12/31/23
SPAIN: Ripe Olives, C–469–818	1/1/23–12/31/23
SOCIALIST REPUBLIC OF VIETNAM: Utility Scale Wind Towers, C–552–826	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA:	

Cast Iron Soil Pipe Fittings, C–570–063	1/1/23–12/31/23
Certain Metal Lockers and Parts Thereof, C–570–134	1/1/23–12/31/23
Laminated Woven Sacks, C–570–917	1/1/23–12/31/23
Light-Walled Rectangular Pipe and Tube, C–570–915	1/1/23–12/31/23
Passenger Vehicle and Light Truck Tires, C–570–017	1/1/23–12/31/23
Sodium Nitrite, C–570–926	1/1/23–12/31/23
Steel Propane Cylinders, C–570–087	1/1/23–12/31/23
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that Commerce conduct an administrative review. For both AD and CVD reviews, the interested party must specify the individual producers or exporters covered by an AD finding or an AD or CVD order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires Commerce to review those particular producers or exporters. If the interested party intends for Commerce to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for Commerce to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an AD administrative review.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of AD orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an AD administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6]

Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2024. If Commerce does not receive, by the last day of August 2024, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling*

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

Application; Annual Inquiry Service List; and Informational Sessions'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS and, on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed AD and CVD proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 24, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–16998 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues

relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–201–820	731–TA–747	Mexico	Fresh Tomatoes (5th Review).	Jacqueline Arrowsmith, (202) 482–5255.
A–570–088	731–TA–1420	China	Steel Racks (1st Review)	Thomas Martin, (202) 482–3936.
A–570–090	731–TA–1421	China	Steel Trailer Wheels (1st Review).	Mary Kolberg, (202) 482–1785.
C–570–089	701–TA–608	China	Steel Racks (1st Review)	Thomas Martin, (202) 482–3936.
C–570–091	701–TA–609	China	Steel Trailer Wheels (1st Review).	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in sections 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR 351 for definitions of terms and for other general information concerning AD and CVD proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 23, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–16988 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–833]

Citric Acid and Certain Citrate Salts From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/

exporters subject to this administrative review did not make sales of subject merchandise at less than normal value (NV) during the July 1, 2022, through June 30, 2023, period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Matthew Palmer, 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) 482–1168 or (202) 482–1678, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 2018, Commerce published in the **Federal Register** the antidumping duty order on citric acid from Thailand.[1] On July 3, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On September 11, 2023, based on timely requests for review, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order* covering three companies.[3] Pursuant to section 751(a)(3)(A) of the Act, Commerce extended the deadline for the preliminary results until July 30, 2024.[4] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[5] The deadline for the preliminary results of this administrative review is now August 6, 2024. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise covered by this *Order* is citric acid from Thailand. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we preliminarily calculated dumping margins of zero percent for both COFCO Biochemical (Thailand) Co., Ltd. (COFCO) and Sunshine Biotech International Co., Ltd. (Sunshine). Thus, in accordance with the expected method, and consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle,*[7] we preliminarily assigned to the non-selected company a zero percent rate, based on the rates calculated for the two mandatory respondents.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
COFCO Biochemical (Thailand) Co., Ltd	0.00
Sunshine Biotech International Co., Ltd	0.00
Xitrical Group Co. LTD	0.00

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice.[8] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[10]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[11] Further, we request that interested parties limit their public executive summary of each issue

[1] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders,* 83 FR 35214 (July 25, 2018) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 42693 (July 3, 2023).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322 (September 11, 2023).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 1, 2024.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[6] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Thailand; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345, 1352 (Fed. Cir. 2016) (*Albemarle*) (holding that Commerce may only use ''other reasonable methods'' if it reasonably concludes that the expected method is ''not feasible'' or ''would not be reasonably reflective of potential dumping margins'').

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 351.309(c)(2) and (d)(2).

[11] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[12]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[13] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Verification

On December 18, 2023, the petitioners, Archer Daniels Midland Company, Cargill, Incorporated, and Primary Products Ingredients Americas LLC, requested that Commerce conduct verification of COFCO's and Sunshine's responses.[15] Accordingly, in accordance with section 782(i) of the Act, Commerce conducted on-site verifications of the information and data submitted by COFCO and Sunshine.[16]

Assessment Rates

Upon issuing the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for companies listed above are not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* AD assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[17] If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[18]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent which did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate established in the original less-than-fair value (LTFV) investigation (*i.e.,* 11.25 percent) if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.25 percent, the all-others rate established in the LTFV investigation.[19] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[12] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310.

[15] *See* Petitioners' Letter, ''Petitioners' Request For Verification,'' dated December 18, 2023.

[16] *See* Memoranda, ''Sales Verification of Sunshine Biotech International Co., Ltd.,'' dated June 20, 2024; and ''Verification of the Sales Response of COFCO in the Antidumping Administrative Review of Citric Acid from Thailand,'' dated June 20, 2024.

[17] In the preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[18] *See* section 751(a)(2)(C) of the Act.

[19] *See Order.*

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: July 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–16994 Filed 7–31–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Preliminary Results and Rescission, in Part, of Antidumping Administrative Review; 2022–2023; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of July 16, 2024 in which Commerce published its preliminary results and rescission, in part, of the 2022–2023 administrative review of the antidumping (AD) order on certain steel nails from Taiwan. In that notice, Commerce incorrectly listed a company in Appendix I, and incorrectly stated the name of a company in Appendix II.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery or Henry Wolfe, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537 or (202) 482–0574, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2024, Commerce published in the **Federal Register** its preliminary results and partial rescission in the 2022–2023 administrative review of certain steel nails from Taiwan.[1] In that notice, we incorrectly listed Integral Building Products Inc. in Appendix I as a company for which Commerce is rescinding the administrative review. Additionally, Liang Chyuan Industrial Co., Ltd. was correctly listed as a company which is not selected for individual examination in Appendix II. Commerce has previously determined that Liang Chyuan Industrial Co., Ltd. and Integral Building Products Inc. comprise a single entity.[2] Because Liang Chyuan Industrial Co., Ltd. remains under review as a company not selected for individual examination, we did not intend to rescind the review with respect to Integral Building Products Inc., as it is part of a single entity with Liang Chyuan Industrial Co, Ltd.

Correction

In the **Federal Register** of July 16, 2024, in FR Doc 2024–15603, on page 57860, in the first column, correct the appendix titled ''Appendix I, Companies for Which Commerce is Rescinding the Administrative Review'' by removing ''Integral Building Products Inc.'' Additionally, on page 57860 in the second column, correct the appendix titled ''Appendix II—Companies Not Selected for Individual Examination,'' by replacing ''Liang Chyuan Industrial Co., Ltd.'' with ''Liang Chyuan Industrial Co., Ltd.; Integral Building Products Inc.'' The corrected appendices entitled ''Appendix I, Companies for Which Commerce is Rescinding the Administrative Review'' and ''Appendix II—Companies Not Selected for Individual Examination'' are attached to this notice.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 351.221(b)(4).

[1] *See Certain Steel Nails from Taiwan: Preliminary Results and Rescission, in Part, of Antidumping Administrative Review; 2022–2023,* 89 FR 57856 (July 16, 2024).

[2] *See Certain Steel Nails from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 48116 (September 12, 2019), unchanged in *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Determination of No Shipments; 2017–2018,* 85 FR 14635 (March 13, 2020).

Dated: July 26, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—Companies for Which Commerce Is Rescinding the Administrative Review

1. A-Jax Enterprises Limited
2. A-Jax International Company Limited
3. A-Stainless International Company Limited
4. Advanced Global Sourcing Limited
5. Aimreach Enterprises Company Limited
6. Alishan International Group Co., Ltd.
7. Alisios International Corporation
8. Allwin Architectural Hardware Inc.
9. A.N. Cooke Manufacturing Co., Pty., Limited
10. Asia Engineered Components
11. Asia Link Industrial Corporation
12. Asia Smarten Way Corp. (Taiwan)
13. Astrotech Steels Private Ltd.
14. Autolink International Company Limited
15. BCR Inc.
16. Boltun Corporation Ltd.
17. Budstech CI Limited
18. Bulls Technology Company Limited
19. Canatex Industrial Company Limited
20. Cata Company Limited
21. Cenluxmetals Company Limited
22. Chang Bin Industrial Co., Ltd.
23. Channg Chin Industry Corporation
24. Charng Yu Industrial Company
25. Chen Nan Iron Wire Co., Ltd.
26. Chen Yu-Lan
27. Chia Da Fastener Company Limited
28. Chia Long Enterprise Co. Ltd.
29. Chiang Shin Fasteners Industries Ltd.
30. Chin Tai Sing Precision Manufactory Co., Ltd.
31. Chun Yu Works & Company Limited
32. Cornwall Enterprise Co., Ltd.
33. Cross International Co., Ltd.
34. Da Wing Industry Company Limited
35. DFK Industrial Corp.
36. Eagre International Trade Co., Ltd.
37. Ever-Top Hardware Corporation
38. Excel Components Manufacturing Co., Ltd.
39. Excellence Industrial Co. Ltd.
40. Fastguard Fastening Systems Inc.
41. Feng Yi Steel Co. Ltd.
42. Fong Yien Industrial Co., Ltd.
43. Fujian Xinhong Mech. & Elec. Co., Ltd.
44. Funtec International Co., Ltd.
45. Fuzhou Royal Floor Co., Ltd.
46. FWU Kuang Enterprise Co., Ltd.
47. H-H Fasteners Company
48. H-Locker Components Inc.
49. Hau Kawang Enterprise Co., Ltd.
50. Hecny Group
51. Hi-Sharp Industrial Corp., Ltd.
52. Hom Wei Enterprise Corporation
53. Hor Liang Industrial Corp.
54. HWA Hsing Screw Industry Co., Ltd.
55. Hwaguo Industrial Fasteners Co., Ltd.
56. Hy-Mart Fastener Co., Ltd.
57. Hyup Sung Indonesia
58. In Precision Link Co., Ltd.
59. Intai Technology Corporation
60. Ji Li Deng Fasteners Co., Ltd.
61. Jinhai Hardware Co., Ltd.

62. Jinn Her Enterprise Limited
63. Jointech Fasteners International Co., Ltd.
64. JunHai Enterprise Co. Ltd.
65. Kan Good Enterprise Co., Ltd.
66. Katsuhana Fasteners Corporation
67. Key Use Industrial Works Co., Ltd.
68. Kot Uniontek Co. Ltd.
69. K. Ticho Industries Co., Ltd.
70. K Win Fasteners Inc.
71. Kuan Hsin Screw Industry Co., Ltd.
72. Liang Ying Fasteners Industry Co., Ltd.
73. Long Chan Enterprise Co., Ltd.
74. Lu Chu Shin Yee Works Co., Ltd.
75. M&W Fasteners Co. Ltd.
76. Mechanical Hardwares Co.
77. Min Hwei Enterprise Co., Ltd.
78. Ming Cheng Precision Co., Ltd.
79. Ming Zhan Industrial Co., Ltd.
80. ML Global Ltd.
81. New Pole Power System Com. Ltd.
82. Newfast Co., Ltd.
83. Noah Enterprise Co., Ltd.
84. Nufasco Fastening System Corp.
85. Nytaps Taiwan Corporation
86. Par Excellence Industrial Co., Ltd.
87. Pengteh Industrial Co., Ltd.
88. Pneumax Corp.
89. Printech T Electronics Corporation
90. Pro-an International Co., Ltd.
91. Pro-Team Coil Nail Enterprise, Inc.
92. Pronto Great China Corp.
93. Professional Fasteners Development Co., Ltd.
94. P.S.M. Fasteners (Asia) Limited
95. PT Enterprise, Inc.
96. Real Fasteners Inc.
97. Region System Sdn. Bhd.
98. Region Industries Co., Ltd.
99. Region International Co., Ltd.
100. Right Source Co., Ltd.
101. Rong Chang Metal Co., Ltd.
102. Romp Coil Nail Industries Inc.
103. San Shing Fastech Corporation
104. SBSCQ Taiwan Limited
105. Shang Jeng Nail Co., Ltd.
106. Shanxi Pioneer Hardware Industrial Co., Ltd.
107. Shen Fong Industries Co.
108. Shin Guang Yin Enterprise Co. Ltd.
109. Somax Enterprise Co., Ltd.
110. Soon Port International Co. Ltd.
111. Star World Product and Trading Co., Ltd.
112. Sumeeko Industries Co., Ltd.
113. Sunshine Spring Co., Ltd.
114. Suntec Industries Co., Ltd.
115. Super Nut Industrial Co., Ltd.
116. Supreme Fasteners Corp.
117. Szu I Industries Co., Ltd.
118. Tag Fasteners Sdn. Bhd.
119. Taifas Corporation
120. Taiwan Geer-Tai Works Co., Ltd.
121. Taiwan Quality Fastener Co., Ltd.
122. Team Builder Enterprise Limited
123. Techno Associates Taiwan Co., Ltd.
124. Techup Development Co., Ltd.
125. TG Co., Ltd.
126. Tianjin Jinchi Metal Products Co. Ltd.
127. Tong Hwei Enterprise Co., Ltd.
128. Topps Wang International Ltd.
129. Unicatch Industrial Co., Ltd.
130. Unistrong Industrial Co., Ltd.
131. United Nail Products Co. Ltd.
132. United Tec Fastening Inc.
133. Vanguard International Co., Ltd.
134. Wa Tai Industrial Co., Ltd.
135. Way Fast International Co., Ltd.
136. Win Fastener Corporation
137. World Kun Co., Ltd.
138. Wumax Industry Co., Ltd.
139. Wyser International Corporation
140. Yiciscrew Co., Ltd.
141. Yng Tran Enterprise Company Limited
142. Yoh Chang Enterprise Company Limited
143. Your Standing International, Inc.
144. Yow Chern Company
145. Yumark Enterprises Corporation
146. Yu Tai World Co., Ltd.
147. Zenith Good Enterprise Corporation
148. Zonbix Enterprise Co. Ltd.

Appendix II—Companies Not Selected for Individual Examination

1. Bestwell International Corporation
2. Create Trading Co., Ltd.
3. Dar Yu Enterprise Co., Ltd.
4. Fastnet Corporation
5. Foison Hardware Income
6. GoFast Company Limited
7. JCH Hardware Company Inc.
8. Jockey Ben Metal Enterprise Co., Ltd.
9. Liang Chyuan Industrial Co., Ltd.; Integral Building Products Inc.
10. Midas Union Co., Ltd.
11. Pao Shen Enterprises Co., Ltd.
12. Rodex Fasteners Corp.
13. Spec Products Corporation
14. Ume-Pride International Inc.
15. WTA International Co., Ltd.
16. Wu Shun Enterprise Co.
17. Yeun Chang Hardware Tool Company Limited

[FR Doc. 2024–16995 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–836]

Mattresses From Indonesia: Initiation of Antidumping Duty Administrative Review; 2023–2024; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of July 5, 2024, in which Commerce initiated antidumping and countervailing duty administrative reviews for various orders with May anniversary dates. This notice incorrectly stated that the 2023–2024 antidumping duty administrative review of mattresses from Indonesia would be deferred for one year.

FOR FURTHER INFORMATION CONTACT: Noah Wetzel, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7466.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2024, Commerce published in the **Federal Register** the initiation of antidumping and countervailing duty administrative reviews for various orders with May anniversary dates.[1] In that notice, Commerce stated that it is deferring the initiation of the 2023–2024 antidumping duty administrative review of mattresses from Indonesia by one year pursuant to 19 CFR 351.213(c) based on a timely request included in the administrative review request received from the Indonesia company PT Zinus Global Indonesia (Zinus Indonesia).[2] However, we are reversing this decision and initiating this administrative review because the domestic interested parties [3] submitted a timely objection to Zinus Indonesia's deferral request pursuant to 19 CFR 351.213(c)(1)(ii).[4]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 89 FR 55567 (July 5, 2024).

[2] *See* Zinus Indonesia's Letter, ''Zinus Review Request and Request to Defer Administrative Review,'' dated May 31, 2024.

[3] The domestic interested parties are: Brooklyn Bedding; Elite Comfort Solutions; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and AFL–CIO (USW).

[4] The deadline for a timely objection to the deferral request was extended. *See* Commerce's Letter, ''Request for Extension of Time to Comment on Deferral Request,'' dated July 9, 2024; *see also* Domestic Interested Parties' Letter, ''Mattress Petitioners' Objection to Zinus' Request to Defer Administrative Review,'' dated July 18, 2024.

Correction

In the **Federal Register** of July 5, 2024, in FR Doc 2024–14771, on pages 55578 and 55579, correct the heading titled ''Deferral of Initiation of Administrative Review'' by deleting it and correct and the placement of the text ''INDONESIA: Mattresses, A–560–836'' by placing it above in the section labeled ''AD Proceedings'' on page 55569, to indicate that this case will be initiated, not deferred. The corrected text for this antidumping duty order is attached to this notice.

Notification to Interested Parties

This notice is issued and published in accordance with section 751(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.213.

Dated: July 26, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

	Period to be reviewed
AD Proceedings	
INDONESIA: Mattresses, A–560–836	5/1/23–4/30/24
Bali Natural Latex.	
CV. Aumireta Anggun.	
Duta Abadi Primantara, Pt.	
Ecos Jaya JL Pasir Awi.	
Mimpi.	
PT Celebes Putra Prima.	
PT Demak Putra Mandiri.	
PT Ecos Jaya Indonesia.	
PT Graha Anom Jaya.	
PT Graha Seribusatujaya.	
PT Kline Total Logistics Indonesia.	
PT Rubberfoam Indonesia.	
PT Solo Murni Epte.	
PT. Ateja Multi Industri.	
PT. Ateja Tritunggal.	
PT. Aurora World Cianjur.	
PT. Cahaya Buana Furindotama.	
PT. CJ Logistics Indonesia.	
PT. Dinamika Indonusa Prima.	
PT. Dunlopillo Indonesia.	
PT. Dynasti Indomegah.	
PT. Grantec Jaya Indonesia.	
PT. Massindo International.	
PT. Ocean Centra Furnindo.	
PT. Quantum Tosan Internasional.	
PT. Romance Bedding & Furniture.	
PT. Royal Abadi Sejahtera.	
PT. Transporindo Buana Kargotama.	
PT. Zinus Global Indonesia.	
Sonder Canada Inc.	
Super Poly Industry PT.	
Zinus, Inc.	

[FR Doc. 2024–16996 Filed 7–31–24; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2024

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in September 2024 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Commerce contact
Antidumping Duty Proceedings	
Circular Welded Carbon Quality Steel Line Pipe from China, A–570–935 (3rd Review)	Thomas Martin (202) 482–3936.
Welded Large Diameter Line Pipe from Japan, A–588–857 (4th Review)	Jacqueline Arrowsmith (202) 482–5255.

	Commerce contact
Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan, A–588–869 (2nd Review).	Thomas Martin (202) 482–3936.
Refillable Stainless-Steel Kegs from Mexico, A–201–849 (1st Review)	Mary Kolberg (202) 482–1785.
Refillable Stainless-Steel Kegs from China, A–570–093 (1st Review)	Mary Kolberg (202) 482–1785.
Uncovered Innerspring Units from China, A–570–928 (3rd Review)	Thomas Martin (202) 482–3936.
Uncovered Innerspring Units from South Africa, A–791–821 (3rd Review)	Thomas Martin (202) 482–3936.
Uncovered Innerspring Units from Vietnam, A–552–803 (3rd Review)	Thomas Martin (202) 482–3936.
Countervailing Duty Proceedings	
Circular Welded Carbon Quality Steel Line Pipe from China, C–570–936 (3rd Review)	Mary Kolberg (202) 482–1785.
Refillable Stainless-Steel Kegs from China, C–570–094 (1st Review)	Mary Kolberg (202) 482–1785.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in September 2024.	

Commerce's procedures for the conduct of sunset review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in a sunset review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the notice of initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the sunset review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 23, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–16997 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE144]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Cost Recovery Fee Notice for the Pacific Cod Trawl Cooperative Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of standard prices fee percentage.

SUMMARY: NMFS publishes the fee percentage for cost recovery for the Pacific Cod Trawl Cooperative (PCTC) Program. The fee percentage for 2024 is 1.92 percent. This notice is intended to provide the 2024 fee percentage to calculate the required payment for cost recovery fees due by August 31, 2024.

DATES: The fee percentage is valid on August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Charmaine Weeks, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires that NMFS collect cost recovery fees for limited access privilege programs. Cost recovery fees include NMFS' actual costs directly related to its management, data collection, and enforcement of the programs. Section 304(d) of the Magnuson-Stevens Act mandates that cost recovery fees not exceed 3 percent of the annual ex-vessel value of fish harvested under any program subject to a cost recovery fee and that the fee be collected either at the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

NMFS manages the PCTC Program as a limited access privilege program. On August 8, 2023, NMFS published a final rule to implement this Program (88 FR 53704). The PCTC Program allocates total allowable catch (TAC) of Pacific cod to trawl catcher vessels and processors in the Bering Sea and Aleutian Islands area (BSAI). Participants in the PCTC Program must form a cooperative and associate with a processor. The PCTC Program includes a process for calculating and administering cost recovery fees under 50 CFR 679.135. The annual PCTC Program cost recovery process builds on other existing cost recovery requirements implemented under other programs. The fee liability is based on the ex-vessel value of fish harvested in the PCTC Program. Each year, the Regional Administrator publishes a notice announcing the fee percentage in the **Federal Register** and sends invoices to cooperatives before July 31.

Each PCTC Program cooperative is responsible for payment of the cost recovery fee assessed on Pacific cod landed under the PCTC Program. Each cooperative must submit any cost recovery fee liability payment(s) no later than August 31. The total dollar amount of the fee due is determined by multiplying the NMFS published fee percentage by the annual ex-vessel value of Cooperative Quota (CQ) landings under the Program, as described in this notice.

Failure to pay cost recovery fee liabilities by August 31st will result in NMFS disapproval of a cooperative's application to transfer CQ or issue a CQ permit the following year until full payment of the fee liability is received

by NMFS. NMFS will not issue a CQ permit until NMFS receives a complete application for CQ issuance and confirmation of the full payment of any cost recovery fee liability.

Standard Price

For purposes of calculating cost recovery fees, NMFS uses a standard ex-vessel price (standard price) for Pacific Cod. A standard price is determined using information on landings purchased (volume) and ex-vessel value paid (value). NMFS annually receives information used to calculate the Pacific cod standard price in the existing Bering Sea and Aleutian Island (BSAI) Pacific cod Ex-vessel Volume and Value Report, which is submitted in early November of each year. NMFS uses this existing data source to calculate standard prices and thus determine the annual PCTC Program fishery value, which, along with the direct program costs, is used to calculate the annual PCTC Program cost recovery fee percentage. The standard prices are described in U.S. dollars per pound for landings made during the previous year. NMFS published the standard price of 0.42 cents per pound for Pacific cod for 2024 in the **Federal Register** on November 24, 2023 (88 FR 82336).

Each landing made under the PCTC Program is multiplied by the standard price to arrive at an ex-vessel value for each landing. These values are summed together to arrive at the ex-vessel value of Pacific Cod (fishery value).

Fee Percentage

Annually, NMFS calculates the applicable fee percentage according to the factors and methods described at § 679.135 for the PCTC Program. NMFS used the standard price of 0.42 cents to calculate the fee percentage applied to landings made in 2024. NMFS determined the fee percentage that applies to landings made in the A and B seasons, which extend from January 20 to June 10, 2024, by dividing the total costs directly related to the management, data collection, and enforcement of the program (direct program costs) by the value of the catch subject to the cost recovery fee.

NMFS captures direct PCTC program costs through an established accounting system that allows NMFS staff to track labor, travel, contracts, rent, and procurement costs. For 2024, the direct program costs for the PCTC Program were tracked from October 1, 2023 to June 30, 2024. NMFS began tracking PCTC Program management costs after the effective date of the final rule implementing the PCTC Program (88 FR 53704, August 8, 2023). NMFS will publish an annual report on the NMFS Alaska Region website in the first quarter of 2025 that summarizes direct program costs for the PCTC Program.

Using the fee percentage formula described generally above, the estimated percentage of direct program costs to fishery value for the 2024 calendar year is 1.92 percent for the PCTC Program. For 2024, NMFS applied the fee percentage to each PCTC landing that was debited from a CQ allocation between January 20 and June 10 to calculate the fee liability for each cooperative. A PCTC cooperative's 2024 fee payments must be submitted to NMFS on or before August 31, 2024. Payment must be made in accordance with the payment methods set forth in § 679.135(a)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2024.

Lindsay Fullenkamp,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–16902 Filed 7–31–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Wednesday, September 4, 2024 from 9 a.m. to 1:30 p.m. (eastern) and open to the public Thursday, September 5, 2024 from 8 a.m. to 12:30 p.m. (eastern).

ADDRESSES: The address of the open meeting is 8111 Gatehouse Rd., Room 345, Falls Church, VA 22042. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: CAPT Shawn Clausen, 703–275–6060 (voice), *shawn.s.clausen.mil@health.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *https://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available on the DHB website, *https://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the September 4–5, 2024, meeting will be available on the DHB website. Any other materials presented in the meeting may also be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific tasks before the DHB.

Agenda: The DHB anticipates receiving decision briefings on the Effective Public Health Communication Strategies with DoD Personnel and Prolonged Theater Care.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting will be held in-person and virtually and is open to the public from 9 a.m. to 1:30 p.m. on September 4, 2024 and 8 a.m. to 12:30 p.m. on September 5, 2024. Seating and virtual participation is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.dhb@health.mil* or by contacting Mr. Tanner Dean at (703) 275–6010 no later than Thursday, August 29, 2024. Additional details will be required from all members of the public attending in-person that do not have Gatehouse building access. Once registered, participant access information will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Tanner Dean at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the FACA, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in

this notice. Written statements may be submitted to the DHB's Designated Federal Officer (DFO), CAPT Clausen, at *shawn.s.clausen.mil@health.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: July 26, 2024.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–16976 Filed 7–31–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees—Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Uniform Formulary Beneficiary Advisory Panel (UFBAP).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The UFBAP is being renewed in accordance with the provisions of chapter 10 of title 5 United States Code (U.S.C.) (commonly known as ''the Federal Advisory Committee Act'' or ''FACA'') and 41 Code of **Federal Register** (CFR) 102–3.50(a). The charter and contact information for the UFBAP's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Pursuant to 10 U.S.C. 1074g(c)(2), the UFBAP shall be composed of no more than 15 members and shall include members that represent: a. Nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries; b. Contractors responsible for the TRICARE retail pharmacy program; c. Contractors responsible for the national mail-order pharmacy program; and d. TRICARE network providers.

The appointment of UFBAP members shall be approved by the Secretary of Defense and the Deputy Secretary of Defense (''the DoD Appointing Authority'') for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the UFBAP, or serve on more than two DoD Federal Advisory committees at one time. The DoD Appointing authority shall appoint the UFBAP's leadership from among the membership previously approved to serve on the UFBAP in accordance with DoD policy and procedures, for a term of service of one-to-two years, with annual renewal, not to exceed the member's approved UFBAP appointment.

UFBAP members who are not full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. UFBAP members who are full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Armed Forces, shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. All UFBAP members are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular points of view, and to discuss and deliberate in a manner that is free from conflicts of interest. With the exception of reimbursement of official UFBAP-related travel and Per diem, UFBAP members serve without compensation.

The public or interested organizations may submit written statements to the UFBAP about the UFBAP's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the UFBAP. All written statements shall be submitted to the DFO for the UFBAP, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: July 26, 2024.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–16974 Filed 7–31–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Transitioning Gang-Involved Youth to Higher Education Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for fiscal year (FY) 2024 for the Transitioning Gang-Involved Youth to Higher Education Program.

DATES:

Applications Available: August 1, 2024.

Deadline for Transmittal of Applications: September 30, 2024.

Deadline for Intergovernmental Review: November 29, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.*

FOR FURTHER INFORMATION CONTACT: Jymece Seward, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C113, Washington, DC 20202–4260. Telephone: 202–453–6138. Email: *Jymece.Seward@ed.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:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Transitioning Gang-Involved Youth to Higher Education (TGIY) Program is to provide a funding opportunity for organizations that work directly with gang-involved youth to help such youth pursue higher education opportunities that will lead to certification or credentials.

Assistance Listing Number: 84.116Y.

OMB Control Number: 1894–0006.

Background: In today's economy, 67 percent of U.S. jobs require a postsecondary credential, and by 2031, this percentage is projected to grow to 71 percent.[1] A report by the Alliance for Excellent Education concluded that increasing the number of students who graduate from high school and complete a postsecondary degree would create significant benefits for individuals, communities, States, and the country as a whole, including increases in lifetime earnings and tax revenues, lower unemployment rates, and decreased crime and incarceration rates.[2]

According to the latest data from the National Youth Gang Survey, in 2012, there were 850,000 gang members in the United States.[3] And, gang members are overrepresented among incarcerated populations in the United States.[4] One study found that 47 percent of [incarcerated] juveniles belong to a gang.[5]

Gang involved youth are 30% less likely to complete high school and 58% less likely to earn a four-year degree compared with their non-gang peers.[6] For individuals who were previously incarcerated, those who enroll in postsecondary education programs were found to be 48 percent less likely to be reincarcerated than those who do not.[7]

For students who are coming out of confinement or incarceration, sustaining engagement in a two-year or four-year college course of study can be challenging as many of these students do not have the educational and family supports traditionally associated with college success and require support to navigate a college path.[8] Effective advising can play a central role in helping students navigate complicated systems and processes that are critical to postsecondary success. There is evidence that implementing comprehensive, integrated advising models; building guided pathways to academic success; integrating wraparound services into holistic advising; and guiding students to career success beyond completion are strategies that can lead to increased retention and completion rates for students.[9]

In order to support gang-involved youth to pursue higher education opportunities, this competition includes two absolute priorities—the first is for projects that work directly with gang-involved youth to help such youth pursue higher education opportunities and the second is to support projects that are designed to increase postsecondary education access, affordability, completion, and success—and two competitive preference priorities focused on providing wraparound student support services and cross-agency coordination. Projects must serve gang-involved youth (as defined in this notice).

Recognizing the unique experiences and perspectives of organizations working with this student population, this competition also includes two invitational priorities—one to support projects that are designed to specifically work with gang-involved youth who are justice involved and one to support projects proposed by organizations that have effectively worked with correctional education programs, Second Chance Pell Programs, or Prison Education Programs.

Priorities: This notice contains two absolute priorities, two competitive preference priorities, and two invitational priorities. The first absolute priority is from the notice of final priority and definition for this program published elsewhere in this issue of the **Federal Register** (2024 NFP). The second absolute priority and the competitive preference priorities are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

The priorities are:

Absolute Priority 1—Projects for Organizations to Work Directly with Gang-Involved Youth to Help Such Youth Pursue Higher Education Opportunities.

To meet this priority, an eligible applicant must demonstrate that the project will work directly with gang-involved youth to help such youth pursue higher education opportunities.

Absolute Priority 2—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success.

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or more of the following priority areas:

(a) Increasing the number and proportion of underserved students who enroll in and complete postsecondary education programs, which may include strategies related to college preparation, awareness, application, selection, advising, counseling, and enrollment.

(b) Supporting the development and implementation of student success programs that integrate multiple comprehensive and evidence-based services or initiatives, such as academic advising, structured/guided pathways, career services, credit-bearing academic undergraduate courses focused on career, and programs to meet basic needs, such as housing, childcare and transportation, student financial aid, and access to technological devices.

(c) Increasing the number of individuals who return to the educational system and obtain a regular high school diploma, or its recognized equivalent for adult learners; enroll in and complete community college, college, or career and technical training; or obtain basic and academic skills, including English language learning, that they need to succeed in college—including community college—as well as career and technical education and/or the workforce.

(d) Supporting evidence-based practices in career and technical education and ensuring equitable access to and successful completion of high-quality programs, credentials, or degrees.

[1] Carnevale, A.P., Smith, N., Van Der Werf, M., & Quinn, M.C. (2023). After Everything: Projections of jobs, education, and training requirements through 2031. *Georgetown University—Georgetown Public Policy Institute Center on Education and the Workforce.*

[2] Alliance for Excellent Education (2013). ''Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings.''

[3] National Gang Center. National Youth Gang Survey Analysis, *https://nationalgangcenter.ojp.gov/survey-analysis.*

[4] Pyrooz, D, Gartner, N, & Smith, M. (2017). ''Consequences of Incarceration for Gang Membership: A Longitudinal Study of Serious Offenders in Philadelphia and Phoenix.'' Criminology.

[5] Ibid.

[6] Pyrooz D.C. (2014). From colors and guns to caps and gowns? The effect of gang membership on educational attainment. *Journal of Research in Crime and Delinquency,* 51(1), 56–87.

[7] Gibbons, A., & Rar, R. (August 20, 2021). ''The societal benefits of postsecondary prison education.'' Brookings Institution.

[8] JDAI Conference. (2017). Going for the Gold in Secure Placements, Center for Educational Excellence in Alternative Settings, Creating a College-Going Culture.

[9] Raise the Bar—Advising Resources Guide. (April 2024), U.S. Department of Education. (See, *e.g.,* Karp, M., Ackerson, S., Cheng, I., Cocatre-Zilgien, E., Costelloe, S., Freeman, B., Lemire, S., Linderman, D., McFarlane, B., Moulton, S., O'Shea, J., Porowski, A., & Richburg-Hayes, L. (2021). Effective advising for postsecondary students: A practice guide for educators (WWC 2022003). Washington, DC: National Center for Education Evaluation and Regional Assistance (NCEE), Institute of Education Sciences, U.S. Department of Education.)

(e) Supporting the development and implementation of evidence-based strategies to promote students' development of knowledge and skills necessary for success in the workplace and civic life.

(f) Providing secondary school students with access to career exploration and advising opportunities to help students make informed decisions about their postsecondary enrollment decisions and to place them on a career path.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 8 points to an application, depending on how well the application meets Competitive Preference Priority 1; and up to an additional 5 points to an application, depending on how well the application meets Competitive Preference Priority 2. Applicants may address one, both, or neither of these competitive preference priorities

These priorities are:

Competitive Preference Priority 1—Meeting Student Social, Emotional, and Academic Needs (up to 8 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or more of the following priority areas:

(a) Creating a positive, inclusive, and identity-safe climate at institutions of higher education through one or both of the following activities:

(1) Fostering a sense of belonging and inclusion for underserved students. (up to 2 points)

(2) Implementing evidence-based practices for advancing student success for underserved students. (up to 2 points); and/or

(b) Fostering partnerships, including across government agencies (*e.g.,* housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education institutions, to provide comprehensive services to students and families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status. (up to 4 points)

Competitive Preference Priority 2—Strengthening Cross-Agency Coordination and Community Engagement To Advance Systemic Change (up to 5 points).

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students by coordinating efforts with Federal, State, or local agencies, or community-based organizations, that support students, to address one or more of the following:

(a) Justice policy. (up to 1 point)

(b) College readiness. (up to 2 points)

(c) Workforce development. (up to 2 points)

Invitational Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Projects Targeted for Justice-Involved Youth.

Projects that are designed to specifically work with gang-involved youth who are justice involved, including formerly incarcerated individuals and/or individuals who have been placed on probation, are being held pre-trial, are subject to diversion, or are subject to other alternative criminal sanctions. These projects should be designed to support the reintegration of, and improve long-term outcomes for, youth and adults after justice system involvement by linking these individuals to appropriate educational opportunities and academic support, vocational rehabilitation, or workforce training programs.

Invitational Priority 2—Organizations with a Correctional Education Program, Second Chance Pell Program, or Prison Education Program.

Projects proposed by entities with prior experience effectively working directly with confined or incarcerated individuals to help such individuals pursue educational opportunities, including prison education programs, Second Chance Pell Programs, and programs that provide or support education in correctional facilities but do not access Federal Pell grants (correctional education programs).

For the purpose of this invitational priority—

Confined or incarcerated individual means an individual who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional facility. An individual is not considered confined or incarcerated if that individual is subject to or serving an involuntary civil commitment, in a halfway house or home detention, or sentenced to serve only weekends.

Prison education program means a program operated by a public, nonprofit, or vocational institution and approved for operation by a correctional entity, an accreditor, and the Department of Education, in which a confined or incarcerated individual receives Pell Grant funds to pay for postsecondary education. A confined or incarcerated individual includes any student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution.

Second Chance Pell Program means a program operated under the Experimental Sites Initiative that provides need-based Pell Grants to incarcerated individuals to allow them to participate in eligible postsecondary programs.

Definitions: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply to the priorities and selection criteria in this notice. The definition of ''gang-involved youth'' is from the 2024 NFP. The definition of ''underserved student'' is from the Supplemental Priorities. The remaining definitions are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Evidence-based means the proposed project component is supported by evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the

treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Gang-involved youth means an individual, between the ages 14 and 24, who is or was involved in a group that meets the following criteria: the group has three or more members who share an identity, typically linked to a name and often other symbols; members view themselves as a gang and are recognized by others as a gang; the group has some permanence and a degree of organization; and the group is involved in an elevated level of criminal activity.

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's Education Logic Model Application at *https://ies.ed.gov/ncee/rel/Products/Region/pacific/Resource/100677.*

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by What Works Clearinghouse (WWC) reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student (which may include students in postsecondary education or career and technical education, and adult learners, as appropriate) in the following subgroup: A student impacted by the justice system, including a formerly incarcerated student.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 4.1), as well as the more recent What Works Clearinghouse Handbook released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: 20 U.S.C. 1138–1138d; Explanatory Statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities. (e) The 2024 NFP.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The Department will implement the provisions included in the OMB final rule, OMB Guidance for Federal Financial Assistance, which amends 2 CFR parts 25, 170, 175, 176, 180, 182, 183, 184, and 200, on October 1, 2024. Grant applicants that anticipate a performance period start date on or after October 1, 2024 should follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046, April 22, 2024) when preparing an application. For more information about these updated regulations please visit: *https://www.cfo.gov/resources/uniform-guidance/.*

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,970,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $900,000 to $990,000.

Estimated Average Size of Awards: $950,000.

Maximum Award: We will not make an award exceeding $990,000 for a single budget period of 36 months.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are institutions of higher education (IHEs) (as defined in section 101 of the Higher Education Act of 1965, as amended (20 U.S.C. 1001)) that are public or private nonprofit IHEs, and public and private nonprofit organizations and agencies that partner with IHEs.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities—to entities listed in the grant application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 606.10(c). We reference additional regulations in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria and priorities that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit applies to the Project Narrative, which is your complete response to the selection criteria and the priorities. However, the page limit does not apply to the Application for Federal Assistance form (SF–424); the ED SF–424 Supplement form; the Budget Information—Non-Construction Program form (ED 524); the assurances and certifications; or the one-page abstract, the program profile form, and supporting budget narrative.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this program are from 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. We will award up to 100 points to an application under the selection criteria and up to 13 additional points under the competitive preference priorities, for a total score of up to 113 points. The maximum score for each criterion is noted in parentheses.

(a) *Quality of the project design.* (up to 20 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project demonstrates a rationale (as defined in this notice). (up to 5 points)

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (up to 10 points)

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (up to 5 points)

(b) *Quality of project services.* (up to 20 points)

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

In addition, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (up to 5 points)

(2) The likely impact of the services to be provided by the proposed project on the intended recipients of those services. (up to 5 points)

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (up to 5 points)

(c) *Significance.* (up to 20 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The potential contribution of the proposed project to increased

knowledge or understanding of educational problems, issues, or effective strategies. (up to 10 points)

(2) The likelihood that the proposed project will result in system change or improvement. (up to 10 points)

(d) *Quality of project personnel.* (up to 20 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 8 points)

In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator. (up to 6 points)

(2) The qualifications, including relevant training and experience, of key project personnel. (up to 6 points)

(e) *Quality of the management plan.* (up to 10 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (up to 5 points)

(2) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (up to 5 points)

(f) *Quality of the project evaluation.* (up to 10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (up to 3 points)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (up to 3 points)

(3) The extent to which the methods of evaluation will, if well implemented, produce promising evidence (as defined in this notice) about the project's effectiveness (up to 4 points).

Note: For the selection criterion ''Quality of personnel'' in paragraph (d), applicants are encouraged to include in their application that they are committed to paying their staff a living wage for the local area and providing benefits.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria in this notice, as well as the competitive preference priorities. A rank order funding slate will be made from this review, and awards will be made in rank order according to the average score received from the peer review. In the event there are two or more applications with the same final score, and there are insufficient funds to fully support each of these applications, the Department applies the following tiebreaking factors.

The first tiebreaker will be application(s) that propose to serve geographic areas that have been previously underserved by this program. If a tie remains, the second tiebreaker will be utilized. The second tiebreaker will be the highest average score for the selection criterion ''Quality of Project Design.''

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *https://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For purposes of Department reporting under 34 CFR 75.110, the Department will use the following program-level performance measures to evaluate the success of the TGIY Program:

(a) Number and rate of project participants enrolled in a postsecondary education program.

(b) Number and rate of project participants, by the end of the grant period, earning a certificate, degree, or other credential.

(c) Number and rate of project participants active in internships, apprenticeships, or other work experiences.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for an award under this program to give careful consideration to the operationalization of the measures in conceptualizing the approach and evaluation for its proposed project.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package 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, compact disc, or other 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 *https://www.govinfo.gov.* At this site you can view this document, as well as all other Department documents 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 *https://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–16836 Filed 7–31–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. 14–209–LNG]

Change In Control: American LNG Marketing LLC

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice of receipt of a Statement of Change in Control filed by American LNG Marketing LLC (American LNG Marketing) on July 1, 2024 (Statement), as supplemented on July 12, 2024 (Supplement). The Statement describes an expected change in American LNG Marketing's upstream ownership. The Statement and Supplement were filed under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable,

and written comments are to be filed as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 16, 2024.

ADDRESSES:

Electronic Filing by email (Strongly encouraged): fergas@hq.doe.gov.

Postal Mail, Hand Delivery, or Private Delivery Services (*e.g.,* FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (240) 780–1691, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

American LNG Marketing states that LNG Holdings LLC (LNG Holdings), a wholly-owned indirect subsidiary of New Fortress Energy, Inc. (Fortress), entered into a Membership Interest Purchase Agreement (MIPA) with Miami LNG Acquirorco, LLC, a Delaware limited liability company and a subsidiary of certain funds and investment vehicles of Pennybacker Capital Management, LLC (Pennybacker).[1] Under the MIPA, Pennybacker will acquire 100% control of LNG Holdings (Florida) LLC, the immediate upstream parent of American LNG Marketing,[2] and thus will indirectly acquire 100% control of American LNG Marketing (the Transaction). American LNG Marketing states that, as a result of the Transaction, American LNG Marketing will no longer be controlled by Fortress and will be controlled by Pennybacker.

Charts illustrating the ownership structure of American LNG Marketing before and after the Transaction are attached to the Supplement as Appendix A and Appendix B, respectively. Additional details can be found in the Statement and Supplement, posted on the DOE website at: *https://www.energy.gov/sites/default/files/2024-07/DOE%20Statement%20of%20Change%20in%20Control%20%28Final%207.1.2024%29.pdf. https://www.energy.gov/sites/default/files/2024-07/Supplement%20to%20DOE%20Statement%20of%20Change%20in%20Control%20%28Final%207.12.24%29.pdf.*

DOE Evaluation

DOE will review the Statement and Supplement in accordance with its CIC Procedures.[3] Consistent with the CIC Procedures, this notice addresses American LNG Marketing's existing authorization to export liquefied natural gas (LNG) to countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and with which trade is not prohibited by United States law or policy (non-FTA countries), granted in DOE/FE Order No. 3690.[4] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorizations inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** to move to intervene, protest, and answer the Statement and Supplement.[5] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in the Statement and Supplement. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590, including the service requirements.

Filings may be submitted using one of the following methods:

(1) Submitting the filing electronically at *fergas@hq.doe.gov;*

(2) Mailing the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section; or

(3) Hand delivering the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section.

For administrative efficiency, DOE prefers filings to be filed electronically. All filings must include a reference to ''Docket No. 14–209–LNG'' in the title line, or ''American LNG Marketing Change in Control'' in the title line.

For electronic submissions: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Statement, Supplement, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at *www.energy.gov/fecm/regulation.*

Signed in Washington, DC, on July 29, 2024.

Amy R. Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2024–16987 Filed 7–31–24; 8:45 am]

BILLING CODE 6450–01–P

[1] American LNG Marketing states that, in contemplation of but prior to executing the MIPA, LNG Holdings (Florida) LLC, a wholly-owned subsidiary of Fortress, acquired 100% of the membership interests in American LNG Marketing through an internal corporate reorganization. As a result of this reorganization, LNG Holdings (Florida) LLC became the immediate upstream parent of American LNG Marketing. *See also infra* at note 3.

[2] *See supra* note 1.

[3] DOE has previously found that the CIC Procedures apply only to external transfers or assignments, not to internal corporate reorganizations. *See, e.g., Port Arthur LNG, LLC,* Notice of Internal Corporate Reorganization, Docket Nos. 15–53–LNG, *et al.* (Apr. 11, 2019) (noting that DOE's Change in Control Procedures, 79 FR 65541 (Nov. 5, 2014) (CIC Procedures), focus on ''ownership or management of the exporting entity chang[ing] hands, resulting in a change in control . . . .'').

[4] American LNG Marketing's Statement also applies to its existing authorizations to export LNG to FTA countries in Docket Nos. 14–209–LNG and 15–19–LNG. DOE will respond to those portions of the filing separately pursuant to the CIC Procedures, 79 FR 65542.

[5] Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings, as described herein.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF24–7–000]

Western Area Power Administration; Notice of Filing

Take notice that on July 18, 2024, Western Area Power Administration submitted a tariff filing per 300.10: SNR_CVP&COTP_WAPA207–20240716 to be effective 10/1/2024.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on August 19, 2024.

Dated: July 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–16864 Filed 7–31–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4202–025]

KEI Power Management, LLC; Notice of Settlement Agreement and Soliciting Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 4202–025.

c. *Date Filed:* July 23, 2024.

d. *Applicant:* KEI Power Management, LLC (KEI Power).

e. *Name of Project:* Lowell Tannery Hydroelectric Project (project).

f. *Location:* The existing project is located on the Passadumkeag River, in the town of Lowell in Penobscot County, Maine.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Lewis Loon, General Manager, 423 Brunswick Avenue, Gardiner, ME 04345; (207) 203–3025 or *lewisc.loon@kruger.com.*

i. *FERC Contact:* Robert Haltner at (202) 502–8612 or *robert.haltner@ferc.gov.*

j. *Deadline for filing comments:* August 13, 2024. Reply comments due: August 23, 2024.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Lowell Tannery Hydroelectric Project (P–4202–025).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. KEI Power filed a Settlement Agreement for the project's relicense proceeding, on behalf of itself; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service; the Maine Department of Marine Resources; and the Penobscot Nation. The purpose of the Settlement Agreement is to resolve, among the signatories, relicensing issues related to project operation and fish passage. The Settlement Agreement includes proposed protection, mitigation, and enhancement measures to address: (1) upstream fish passage facilities improvements, modifications, and construction; (2) fish passage monitoring and adaptive management; (3) downstream fish passage enhancements; (4) upstream American eel passage provisions; and (5) fishway operation and maintenance. KEI Power requests that any new license issued by the Commission for the project contain conditions consistent with the provisions of the Settlement Agreement and within the scope of its regulatory authority.

l. A copy of the Settlement Agreement may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (*i.e.,* P–4202). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: July 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–16863 Filed 7–31–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12114–01–OEJECR]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

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 National Environmental Justice Advisory Council (NEJAC) is necessary and in the public interest in connection with the performance of duties imposed on the agency by law. Accordingly, NEJAC will be renewed for an additional two-year period. The purpose of the NEJAC is to provide advice and recommendations to the Administrator about issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Paula Flores Gregg, NEJAC Designated Federal Officer, U.S. EPA, at (214) 665–8123 or via email at *nejac@epa.gov.*

Laura Ebbert,

Acting Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2024–16771 Filed 7–31–24; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, August 8, 2024.

PLACE: You may observe this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov*, select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

- Approval of Minutes for July 11, 2024
- Annual Report on the Farm Credit System's Young, Beginning, and Small Farmers and Ranchers Mission Performance

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2024–17074 Filed 7–30–24; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1003; FR ID 234948]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and 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 might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' 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.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 3, 2024.

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: 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: 3060–1003.

Title: Communications Disaster Information Reporting System (DIRS).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 18,306 respondents; 292,896 responses.

Estimated Time per Response: 10 minutes.

Frequency of Response: On occasion and annual reporting requirements; recordkeeping requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection is contained in 1, 4(i), 4(j), 4(n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309 316, 332, and 403 of the Communications Act of 1934, as amended, and 47 U.S.C. 151, 154(i)–(j) & (n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403; sections 2, 3(b), and 6–7 of the Wireless Communications and Public Safety Act of 1999, 47 U.S.C. 615 note, 615, 615a–1, 615b, section 106 of the Twenty First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. 615c, section 506(a) of the Repack Airways Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act), and section 6206 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1426.

Total Annual Burden: 48,816 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission launched the Disaster Information Reporting System (DIRS) in 2007 pursuant to its mandate to promote the safety of life and property through the use of wire and radio communication as required by the Communications Act of 1934, as amended. DIRS is an efficient, and web-based system that communications companies use to report their infrastructure status during times of crisis (*e.g.,* related to a disaster). DIRS uses a number of template forms tailored to different communications sectors (*i.e.,* wireless, wireline, broadcast, and cable) to facilitate the entry of this information. To use DIRS, a company first inputs its emergency contact information. After this, they submit information using the template form appropriate for their communications sector. Certain federal, state, territorial, and Tribal Nation agencies may request access to certain geographically relevant reports filed in DIRS.

In a *Second Report and Order* adopted on January 25, 2024, as FCC 24–5, the Commission adopted rules requiring cable communications, wireless, wireline and interconnected VoIP providers (Subject Providers) to report on their infrastructure status in during emergencies and crises when DIRS is activated and to submit a final report to the Commission within 24 hours of DIRS deactivation. This new cadence for DIRS reporting will improve management and mitigation of the short-term and long-term impacts of disasters on communications networks which will enhance situational awareness in emergency and disaster situations for the Commission, emergency responders, and the public at large.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2024–16962 Filed 7–31–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearances for information collection requirements in Regulations B, E, M, and Z, which are enforced by the Commission. These clearances expire on November 30, 2024.

DATES: Comments must be filed by September 30, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Regs BEMZ, PRA Comment, P085405,'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds or Stephanie Rosenthal, Attorneys, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, (202) 326–3224, *creynolds@ftc.gov* or *srosenthal@ftc.gov.*

SUPPLEMENTARY INFORMATION: As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the four rules covered by this notice. The four regulations are:

(1) Regulations promulgated under the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (ECOA) (Regulation B) (OMB Control Number: 3084–0087);

(2) Regulations promulgated under the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (EFTA) (Regulation E) (OMB Control Number: 3084–0085);

(3) Regulations promulgated under the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (CLA) (Regulation M) (OMB Control Number: 3084–0086); and

(4) Regulations promulgated under the Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (TILA) (Regulation Z) (OMB Control Number: 3084–0088).

Type of Review: Extension without change of currently approved collections, except for new Regulation B requirements, which derive from statutory amendments.

Affected Public: Private Sector: Businesses and other for-profit entities.

Discussion:

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010), almost all rulemaking authority for the ECOA, EFTA, CLA, and TILA transferred from the Board of Governors of the Federal Reserve System (Board) to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011 (transfer date). To implement this transferred authority, the CFPB published new regulations in 12 CFR part 1002 (Regulation B), 12 CFR part 1005 (Regulation E), 12 CFR part 1013 (Regulation M), and 12 CFR part 1026 (Regulation Z) for those entities under its rulemaking jurisdiction.[1] Although the Dodd-Frank Act transferred most rulemaking authority under ECOA, EFTA, CLA, and TILA to the CFPB, the Board retained rulemaking authority for certain motor vehicle dealers[2] under all of these

[1] 12 CFR 1002 (Reg. B) (81 FR 25323, Apr. 28, 2016); 12 CFR 1005 (Reg. E) (81 FR 25323, Apr. 28, 2016); 12 CFR 1013 (Reg. M) (81 FR 25323, Apr. 28, 2016); and 12 CFR 1026 (Reg. Z) (81 FR 25323, Apr. 28, 2016).

[2] Generally, these are dealers ''predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or

statutes and also for certain interchange-related requirements under EFTA.[3]

As a result of the Dodd-Frank Act, the FTC and the CFPB generally share the authority to enforce Regulations B, E, M, and Z for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers.[4] Because of this shared enforcement jurisdiction, the two agencies have relied on the previously-cleared PRA burden estimates between them,[5] except that the FTC generally has assumed all of the burden estimates associated with motor vehicle dealers [6] and state-chartered credit unions, and has added estimates for the CFPB's new requirements under Regulation B. The PRA burden hours not attributable to motor vehicle dealers and, as applicable, to state-chartered credit unions is reflected in the CFPB's PRA clearance requests to OMB, as well as in the FTC's burden estimates below.

Pursuant to the Dodd-Frank Act, the FTC generally has sole authority to enforce Regulations B, E, M, and Z regarding certain motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, that, among other things, assign their contracts to unaffiliated third parties.[7] Because the FTC has exclusive jurisdiction to enforce these rules for such motor vehicle dealers and retains its concurrent authority with the CFPB for other types of motor vehicle dealers, and in view of the different types of motor vehicle dealers, the FTC retains the entire PRA burden for motor vehicle dealers in the burden estimates below.

The regulations impose certain recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. *See* 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

All four of these regulations require covered entities to keep certain records, but FTC staff believes these records are kept in the normal course of business even absent the particular recordkeeping requirements.[8] Covered entities, however, may incur some burden associated with ensuring that they do not prematurely dispose of relevant records (*i.e.,* during the time span they must retain records under the applicable regulation).

The regulations also require covered entities to make disclosures to third parties. Related compliance involves set-up/monitoring and transaction-specific costs. ''Set-up'' burden, incurred only by covered new entrants, includes identifying the applicable required disclosures, determining how best to comply, and designing and developing compliance systems and procedures. ''Monitoring'' burden, incurred by all covered entities, includes their time and costs to review changes to regulatory requirements, make necessary revisions to compliance systems and procedures, and to monitor the ongoing operation of systems and procedures to ensure continued compliance. ''Transaction-related'' burden refers to the time and cost associated with providing the various required disclosures in individual transactions, thus, generally, of much lesser magnitude than ''setup'' and ''monitoring'' burden. The FTC's estimates of transaction time and volume are intended as averages. The population of affected motor vehicle dealers is one component of a much larger universe of such entities.

The required disclosures do not impose PRA burden on some covered entities because they make those disclosures in the normal course of business. For other covered entities that do not, their compliance burden will vary depending on the extent to which they have developed effective computer-based or electronic systems and procedures to communicate and document required disclosures.[9]

The respondents included in the following burden calculations consist of, among others, credit and lease advertisers, creditors, owners (such as purchasers and assignees) of credit obligations, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers (EFTs) of government benefits, and lessors.[10] The burden estimates represent FTC staff's best assessment, based on its knowledge and expertise relating to the financial services industry, of the average time to complete the aforementioned tasks associated with recordkeeping and disclosure. Staff considered the wide variations in covered entities' (1) size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) EFT types

both.'' *See* Dodd-Frank Act, sec. 1029, 12 U.S.C. 5519(a), (c).

[3] *See* Dodd-Frank Act, sec. 1075, 15 U.S.C. 1693 (these requirements are implemented through Board Regulation II, 12 CFR pt. 235, rather than EFTA's implementing Regulation E).

[4] The FTC's enforcement authority includes state-chartered credit unions; other federal agencies also have various enforcement authority over credit unions. For example, for large credit unions (exceeding $10 billion in assets), the CFPB has certain authority. The National Credit Union Administration also has certain authority for state-chartered federally insured credit unions, and it additionally provides insurance for certain state-chartered credit unions through the National Credit Union Share Insurance Fund and examines credit unions for various purposes. There are approximately thirteen state-chartered credit unions exceeding $10 billion in assets, and the CFPB assumes PRA burden for those entities. As of the fourth quarter of 2023, there were approximately 1,936 state-chartered credit unions with federal insurance; there also have been an estimated 112 or more which were privately insured, and an estimated 100 or more in Puerto Rico which were insured by a quasi-governmental entity. Because of the difficulty in parsing out PRA burden for such entities in view of the overlapping authority, the FTC's figures include PRA burden for all state-chartered credit unions, unless otherwise noted. However, in view of fluctuations that began due to COVID–19 and have continued and to avoid undercounting, we have retained the prior estimate of 2,300 state-chartered credit unions, unless otherwise stated. As noted above, the CFPB's figures as to state-chartered credit unions include burden for those entities exceeding $10 billion in assets. *See generally* Dodd-Frank Act, secs. 1061, 1025, 1026. This attribution does not change actual enforcement authority. We also have retained the prior burden hours generally in the estimates below, in view of these considerations, adding only those applicable for new requirements issued by the CFPB for Regulation B, issued in implementation of the Dodd-Frank Act, sec. 1071, amending the Equal Credit Opportunity Act, codified at 15 U.S.C. 1691c–2, discussed below.

[5] The CFPB also factors into its burden estimates respondents over which it has jurisdiction but the FTC does not.

[6] *See* Dodd-Frank Act, sec. 1029, 12 U.S.C. 5519(a), as limited by subsection (b) as to motor vehicle dealers. Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

[7] *See* Dodd-Frank Act, sec. 1029, 12 U.S.C. 5519(a), (c).

[8] PRA ''burden'' does not include ''time, effort, and financial resources'' expended in the normal course of business, regardless of any regulatory requirement. *See* 5 CFR 1320.3(b)(2).

[9] For example, large companies may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, *e.g.,* notice of changes in terms. Smaller companies may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; if so, they may have minimal additional burden. Other entities may have incorporated fewer of these approaches into their systems and thus may have a higher burden.

[10] The Commission generally does not have jurisdiction over banks, thrifts, and federal credit unions under the applicable regulations.

used; (4) types and frequency of adverse actions taken; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

The cost estimates that follow relate solely to labor costs, and they include the time necessary to train employees how to comply with the regulations. Staff calculated labor costs by multiplying appropriate hourly wages by the burden hours described above. The hourly wages used were $66 for managerial oversight, $47 for skilled technical services, and $22 for clerical work. These figures are averages drawn from Bureau of Labor Statistics data.[11] Further, these cost estimates assume the following labor category apportionments, except where otherwise indicated below: recordkeeping—10% skilled technical, 90% clerical; disclosure—10% managerial, 90% skilled technical.

The applicable PRA requirements impose minimal capital or other non-labor costs.[12] Affected entities generally already have or obtain the necessary equipment (including technology) for other business purposes. Similarly, FTC staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the normal course of business.

The following discussion and tables present estimates under the PRA of recordkeeping and disclosure average time and labor costs, excluding that which FTC staff believes entities incur customarily in the normal course of business and information compiled and produced in response to FTC law enforcement investigations or prosecutions.[13]

1. Regulation B

The ECOA (Equal Credit Opportunity Act) prohibits discrimination in the extension of credit. Regulation B implements the ECOA, establishing disclosure requirements to assist customers in understanding their rights under the ECOA, recordkeeping requirements to assist agencies in enforcement, and monitoring and reporting requirements. Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, and diverse others. In 2023, the CFPB amended Regulation B, to create subparts A and B, in implementing amendments mandated by the Section 1071 of the Dodd Frank Act, 12 U.S.C. 1691c–2, pertaining to small business lending, including for small businesses owned by women or minorities.[14] As a result, Regulation B, Subpart A, now contains the prior Regulation B requirements; Regulation B, Subpart B, contains the new small business lending requirements.[15]

FTC staff estimates that Regulation B, subpart A general recordkeeping requirements affect 530,762 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per firm for a total of 663,453 hours. Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each (of skilled technical time) for approximately 2.6 million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 43,333 hours.[16] Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 1,500 firms, with an average annual burden of one hour (of skilled technical time) per firm, for a total of 1,500 hours, and that recordkeeping of any corrective action as a result of self-testing would affect 10% of them, *i.e.,* 150 firms, with an average annual burden of four hours (of skilled technical time) per firm, for a total of 600 hours.[17] This is a total of 708,886 hours for Subpart A.

Regulation B, Subpart B, also requires recordkeeping for its data requirements. Staff estimates that these requirements affect 681 covered financial institutions subject to the Commission's jurisdiction, at an average annual burden of 32 hours per firm for 24 Type A entities (state-chartered credit unions), 68 hours per firm for 553 Type B entities (520 non-depositories plus 33 state-chartered credit unions) and 5,280 hours per firm for 104 entities (100 non-depositories plus 4 state-chartered credit unions), for a total of 587,492 recordkeeping hours for Subpart B.[18]

This yields a total annual recordkeeping burden of 1,296,378 hours for Regulation B, Subparts A and B.

Regulation B, Subpart A, requires that creditors (*i.e.,* entities that regularly

[11] These inputs are based broadly on mean hourly data found within the ''Bureau of Labor Statistics, Economic News Release,'' April 3, 2024, Table 1, ''National employment and wage data from the Occupational Employment and Wage Statistics survey by occupation, May 2023.'' *https://www.bls.gov/news.release/ocwage.t01.htm.*

[12] To the extent that entities subject to the regulations update or implement their data systems with additional features, these serve multiple business purposes associated with financial transactions and related activities, including, for example, compliance with diverse state requirements.

[13] *See* 5 CFR 1320.4(a) (excluding information collected in response to, among other things, a federal civil action or ''during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities'').

[14] *See* CFPB, Final Rule, Small Business Lending Under the Equal Credit Opportunity Act (Regulation B) (CFPB Rule), 88 FR 35150 (May 31, 2023), *available at https://www.govinfo.gov/content/pkg/FR-2023-05-31/pdf/2023-07230.pdf.* The CFPB generally refers to these requirements as those pertaining to ''small business lending.'' *See* CFPB Rule, 88 FR at 35150. That term is also used herein.

The Federal Reserve Board has not issued its related rule for these requirements covering certain motor vehicle dealers pursuant to the Dodd Frank Act, Section 1029, 12 U.S.C. 5519. In May 2024, following the U.S. Supreme Court ruling in *Consumer Fin. Protection Bureau* v. *Community Fin. Servs. Ass'n of Am., Ltd.* (*CFPB* v. *CFSA*), No. 22–448, 2024 WL 2193873 (U.S.S.C. May 16, 2024), *available at https://www.supremecourt.gov/opinions/23pdf/22-448_o7jp.pdf,* the CFPB issued informal guidance extending the compliance dates for the small business lending rule and indicated it would issue an interim final rule; on June 25, 2024, the CFPB issued an interim final rule, extending the compliance dates accordingly. *See* CFPB, Small Business Lending Rulemaking, *available at https://www.consumerfinance.gov/1071-rule/.* The FTC has hereunder included estimates of burden for these requirements, based on currently available information, including the supplementary information with the CFPB Rule, 88 FR 35150, and its related CFPB Supporting Statement.

[15] In implementing Regulation B, Subpart B, the CFPB noted that merchant cash advances are covered under that part, and are ''credit'' subject to Regulation B (and ECOA). *See, e.g.,* 88 FR 35223. When applicable, these entities (to the extent they are ''creditors'' under Subpart A) also apparently would be subject to, for example, the requirement to provide notices whenever they take adverse action, such as denial of a credit application. The CFPB estimates about 100 merchant cash advance providers as active in the small business lending market. *See* CFPB Rule, 88 FR 35164. The FTC estimates below cover those providers as ''creditors'' for Subpart A and re applicable transactions. As noted above, in view of fluctuations that occurred with COVID–19 and have continued (and with respect to which the Commission did not reduce its prior burden estimates to avoid undercounting, despite varied market contractions and shifts), these entities are included within the burden estimates below.

[16] Regulation B contains model forms that creditors may use to gather and retain the required information.

[17] In contrast to banks, for example, entities under FTC jurisdiction are not subject to audits by the FTC for compliance with Regulation B; rather they may be subject to FTC investigations and enforcement actions. This may impact the level of self-testing (as specifically defined by Regulation B) in a given year, and staff has sought to address such factors in its burden estimates.

[18] A financial institution is covered by Regulation B, Subpart B, if it originates at least 100 covered credit transactions for small businesses in each of the two preceding calendar years (once the compliance date takes effect). A ''covered credit transaction'' is one that meets the definition of business credit under Regulation B (as it existed before the small business lending amendments), with some exceptions, and includes, for example, loans, lines of credit, merchant cash advances and others. *See generally* 12 CFR 1002.104 and 1002.105; CFPB Rule, 88 FR 35150. Burden hours for entities vary depending on the level of complexity of their transactions and procedures.

participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action, such as denial of a credit application. It requires entities that extend mortgage credit with first liens to provide a copy of the appraisal report or other written valuation to applicants.[19] Regulation B, Subpart A, also requires that for accounts that spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that: (1) providing the information is optional; (2) the creditor will not take the information into account in any aspect of the credit transactions; and (3) if applicable, the information will be noted by visual observation or surname if the applicant chooses not to provide it.[20]

Regulation B, Subpart B requires covered financial institutions to collect and report annually to the CFPB various data on covered applications for covered credit transactions from small businesses, including those owned by women or minorities—which, among other things, generally involves entities with a gross annual revenue for the preceding fiscal year of $5 million or less. It covers credit such as loans, lines of credit, credit cards, merchant cash advances, and various other credit products. Collection and reporting to the CFPB follows procedures established under the regulation and certain data points.[21] The burden hours below are based on those for DIs (state chartered credit unions, which are considered depository institutions, under the rule) and non-DIs (all other entities), and whether the applicable respondents are Type A, B, or C entities under the rule.[22] Staff estimates that the reporting requirements (which under the rule include that for collection of data) for Regulation B, subpart B, involve both one-time and ongoing burden. Burden estimates relating to the disclosures required under Regulation B, Subpart A, and reporting required under Regulation B, subpart B, and labor cost estimates for Subparts A and B are provided in the tables below.

Burden Totals

Recordkeeping: 1,296,378 annual hours; $32,783,491, associated annual labor costs.

Disclosures and Reporting: 2,581,114 annual hours; $126,216,566, associated annual labor costs.

REGULATION B, SUBPART A: DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring [1]			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Credit history reporting	133,553	.25	33,388	60,098,850	.25	250,412	283,800
Adverse action notices	530,762	.75	398,072	92,883,350	.25	387,014	785,086
Appraisal reports/written valuations	4,650	1	4,650	1,725,150	.50	14,376	19,026
Self-test disclosures	1,500	.5	750	60,000	.25	250	1,000
Total							1,088,912

[1] The estimates assume that all applicable entities would be affected, with respect to appraisal reports and other written valuations.

[19] While the rule also requires the creditor to provide a short written disclosure regarding the appraisal process, the disclosure is provided by the CFPB, and is thus not a ''collection of information'' for PRA purposes. Accordingly, it is not included in burden estimates below.

[20] The disclosure may be provided orally or in writing. The model form provided by Regulation B assists creditors in providing the written disclosure.

[21] In addition to certain information related to the financial institution, such as a unique identifier and its name and address, these data points include, for example, the application date, application method, application recipient, credit type and credit purpose, amount applied for and amount approved or originated, action taken and date, denial reasons, pricing information, census tract, and other items, as well as certain demographics of applicants' ownership (including whether the applicant is a minority-owned business or women-owned business, whether the applicant is an LBGTQ+-owned business, and the ethnicity, race, and sex of the applicant's principal owners). *See generally* 12 CFR 1002.107 and 1002.109; CFPB Rule, 88 FR 35150. The CFPB has provided a sample data collection form, which is voluntary, that financial institutions may use for data collection and reporting; in the alternative, they could use their own form that complies with the requirements. *See* 12 CFR part 1002, Appendix E. Although financial institutions must request the various information specified in the rule, small business entities need not provide it.

In a few instances, Subpart B includes certain notices for financial institutions to provide to consumers in conjunction with the data collection and reporting. These notices are provided by the CFPB for the financial institution and are included within the reporting estimates (and are not separate collections of information). The first two notices pertain to information being requested by the financial institution. *See* 12 CFR 1002.107(a)(18) & (19) (that the financial institution cannot discriminate on the basis of minority-owned, women-owned, or LGBTQI+-owned business status, on the basis of a principal owner's ethnicity, race, or sex, or on whether the applicant provides any of this information, when the financial institution requests that information); and 1002.108(c) & (d) (a financial institution could establish a ''firewall'' so that employees and certain other persons cannot access certain protected financial information of the applicants but if it doesn't, the financial institution would instead notify small business entities when collecting information that certain employees or persons can access the demographic information provided). The above notices are included on the CFPB's data collection form. Additionally, these notices can be combined together (if the financial institution chooses to use its own form), and/or can be oral depending on the circumstances (including for in-person, oral, or telephone applications). The CFPB also has provided the third notice referenced above. *See* 12 CFR 1002.110(c) & (d), and 1002.110(c)–1, Supp. 1, Regulation B Official Staff Commentary (a notice for the financial institution's website or otherwise upon request, that the financial institution's data is available from the CFPB). These notices are encompassed within the reporting requirements of the rule.

[22] Under the CFPB rule: Type A entities have the lowest level of complexity, and are estimated to originate less than 150 covered applications annually; Type B entities have a mid-level of complexity, and are estimated to originate 150–999 covered applications annually; and Type C entities have the highest level of complexity, and are estimated to originate 1000 or more covered applications annually. *See* CFPB Rule, 88 FR 35496–97.

REGULATION B, SUBPART B: REPORTING (SETUP/ONE-TIME)—BURDEN HOURS

Reporting	Setup/one-time for reporting [1]		
	Respondents	Average burden per respondent (hours)	Total setup for reporting burden (hours)
Type A DIs	24	273	6,552
Type B DIs	33	176	5,808
Type C DIs	4	503	2,012
All Non DIs	620	253	156,860
Total			171,232

[1] The estimates assume that all applicable entities would be affected.

REGULATION B, SUBPART B: REPORTING (ONGOING)—BURDEN HOURS

Reporting	Ongoing for reporting [1]		
	Respondents	Average burden per respondent (hours)	Total reporting burden (hours)
Type A DIs	24	112	2,688
Type B DIs	33	658	21,714
Type C DIs	4	9,177	36,708
Type B Non DIs	520	658	342,160
Type C Non-DIs	100	.9,177	917,700
Total			1,320,970

[1] The estimates assume that all applicable entities would be affected.

REGULATION B, SUBPART A: RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
General recordkeeping	0	$0	66,345	$3,118,215	597,108	$13,136,376	$16,254,591
Other recordkeeping	0	0	43,333	2,036,651	0	0	2,036,651
Recordkeeping of self-test	0	0	1,500	70,500	0	0	70,500
Recordkeeping of corrective action	0	0	600	28,200	0	0	28.200
Total Recordkeeping							18,389,942
Disclosures:							
Credit history reporting	28,380	1,873,080	255,420	12,004,740	0	0	13,877,820
Adverse action notices	78,509	5,181,594	706,577	33,209,199	0	0	38,390,793
Appraisal reports	1,903	125,598	17,123	804,781	0	0	930,379
Self-test disclosure	100	6,600	900	42,300	0	0	48,900
Total Disclosures							53,247,892
Total Recordkeeping and Disclosures							71,637,834

REGULATION B, SUBPART B: RECORDKEEPING AND REPORTING—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
Recordkeeping	0	$0	58,749	$2,761,203	528,743	$11,632,346	$14,393,549
Total Recordkeeping							14,393,549
Reporting:							
One-time	17,123	1,130,118	154,109	7,243,123	0	0	8,373,241
Ongoing	132,097	8,718,402	1,188,873	55,877,031	0	0	64,595,433
Total Reporting							72,968,674
Total Recordkeeping and Reporting							87,362,223

REGULATION B, SUBPARTS A AND B: RECORDKEEPING, DISCLOSURES AND REPORTING—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
Total Recordkeeping, Disclosures and Reporting							159,000,057

2. Regulation E

The EFTA (Electronic Fund Transfer Act) requires that covered entities provide consumers with accurate disclosure of the costs, terms, and rights relating to EFT and certain other services. Regulation E implements the EFTA, establishing disclosure and other requirements to aid consumers and recordkeeping requirements to assist agencies with enforcement. It applies to financial institutions, retailers, gift card issuers and others that provide gift cards, service providers, various federal and state agencies offering EFTs, prepaid account entities, etc. Staff estimates that Regulation E's recordkeeping requirements affect 251,053 firms offering EFT and certain other services to consumers and that are subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 251,053 hours. Burden estimates relating to the disclosures required under Regulation E and labor cost estimates are provided in the tables below.

Burden Totals

Recordkeeping: 251,053 annual hours; $6,150,791, associated annual labor costs.

Disclosures: 7,184,903 annual hours; $357,041,764, associated annual labor costs.

REGULATION E—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Initial terms	27,300	.5	13,650	273,000	.02	91	13,741
Change in terms	8,550	.5	4,275	11,286,000	.02	3,762	8,037
Periodic statements	27,300	.5	13,650	327,600,000	.02	109,200	122,850
Error resolution	27,300	.5	13,650	273,000	5	22,750	36,400
Transaction receipts	27,300	.5	13,650	1,375,000,000	.02	458,333	471,983
Preauthorized transfers	258,553	.5	129,277	6,463,825	.25	26,933	156,210
Service provider notices	20,000	.25	5,000	200,000	.25	833	5,833
ATM notices	125	.25	31	25,000,000	.25	104,167	104,198
Electronic check conversion	48,553	.5	24,277	728,295	.02	243	24,520
Overdraft services	15,000	.5	7,500	1,500,000	.02	500	8,000
Gift cards	15,000	.5	7,500	750,000,000	.02	250,000	257,500
Remittance transfers:							
Disclosures	4,800	1.25	6,000	96,000,000	.9	1,440,000	1,446,000
Error resolution	4,800	1.25	6,000	120,960,000	.9	1,814,400	1,820,400
Agent compliance	4,800	1.25	6,000	96,000,000	.9	1,440,000	1,446,000
Prepaid accounts and gov't benefits:							
Disclosures	550	[1] 40 × 10	220,000	2,750,000,000	.02	916,667	1,136,667
Disclosures—updates	138	1 × 10	[2] 1,380	N/A			1,380
Access to account information	550	[3] 20 × 10	110,000	1,100,000	.01	183	110,183
Error resolution	300	4 × 4	4,800	275,000	2	9,167	13,967
Error resolution—followup [4]		N/A		1,380	30	690	690
Submission of agreements	138	2 × 1	276	690	1	11	287
Updates to agreements [5]		N/A		690	5	57	57
Total							7,184,903

[1] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[2] Individual burden hours are listed first, followed by the number of programs.
[3] Burden hours are on a per program basis; individual burden hours are listed first, followed by the number of programs.
[4] This pertains to prepaid accounts.
[5] This pertains to prepaid accounts' agreements.

REGULATION E—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
Recordkeeping	0	$0	25,105	$1,179,935	225,948	$4,970,856	$6,150,791
Disclosures:							
Initial terms	1,374	90,684	12,367	581,249	0	0	671,933
Change in terms	804	53,064	7,233	339,951	0	0	393,015
Periodic statements	12,285	810,810	110,565	5,196,555	0	0	6,007,365
Error resolution	3,640	240,240	32,760	1,539,720	0	0	1,779,960
Transaction receipts	47,198	3,115,068	424,785	19,964,895	0	0	23,079,963
Preauthorized transfers	15,621	1,030,986	140,589	6,607,683	0	0	7,638,669
Service provider notices	583	38,478	5,250	246,750	0	0	285,228
ATM notices	10,420	687,720	93,778	4,407,566	0	0	5,095,286
Electronic check conversion	2,452	161,832	22,068	1,037,096	0	0	1,198,928

REGULATION E—RECORDKEEPING AND DISCLOSURES—COST—Continued

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
Overdraft services	800	52,800	7,200	338,400	0	0	391,200
Gift cards	25,750	1,699,500	231,750	10,892,250	0	0	12,591,750
Remittance transfers:							
Disclosures	144,600	9,543,600	1,301,400	61,165,800	0	0	70,709,400
Error resolution	182,040	12,014,640	1,638,360	77,002,920	0	0	89,017,560
Agent compliance	144,600	9,543,600	1,301,400	61,165,800	0	0	70,709,400
Prepaid accounts and gov't. benefits:							
Disclosures	113,667	7,502,022	1,023,000	48,081,000	0	0	55,583,022
Disclosures—updates	138	9,108	1,242	58,374	0	0	67,482
Access to account information	11,018	727,188	99,165	4,660,755	0	0	5,387,943
Error resolution	1,397	92,202	12,570	590,790	0	0	6,382,992
Error resolution—follow-up	69	4,554	621	29,187	0	0	33,741
Submission of agreements	29	1,9,14	259	12,173	0	0	14,087
Updates to agreements	6	396	52	2,444	0	0	2,840
Total Disclosures							357,041,764
Total Recordkeeping and Disclosures							363,192,555

3. Regulation M

The CLA (Consumer Leasing Act) requires that covered entities provide consumers with accurate disclosure of the costs and terms of leases. Regulation M implements the CLA, establishing disclosure requirements to help consumers comparison shop and understand the terms of leases and recordkeeping requirements. It applies to vehicle lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, diverse types of lease advertisers, and others. Staff estimates that Regulation M's recordkeeping requirements affect approximately 30,203 firms within the FTC's jurisdiction leasing products to consumers at an average annual burden of one hour per firm, for a total of 30,203 hours. Burden estimates relating to the disclosures required under Regulation M and labor cost estimates are provided in the tables below.

Burden Totals [23]

Recordkeeping: 30,203 annual hours; $1,936,018, associated annual labor costs.

Disclosures: 71,750 annual hours; $4,599,175, associated annual labor costs.

REGULATION M—DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondents (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	
Motor Vehicle Leases [1]	26,690	1	26,690	4,000,000	.50	33,333	60,023
Other Leases [2]	3,513	.50	1,757	60,000	.25	250	2,007
Advertising	14,615	.50	7,308	578,960	.25	2,412	9,720
Total							71,750

[1] This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). CLA and Regulation M now cover leases up to $69,500 plus an annual adjustment.

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). CLA and Regulation M now cover leases up to $69,500 plus an annual adjustment.

REGULATION M—RECORDKEEPING AND DISCLOSURES—COST

Required Task	Managerial		Skilled Technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($122/hr.)	
Recordkeeping	27,183	$1,794,078	3,020	$141,940	0	0	$1,936,018
Disclosures:							
Motor Vehicle Leases	54,021	3,565,386	6,002	282,094	0	0	3,847,480
Other Leases	1,806	119,196	201	9,447	0	0	128,643
Advertising	8,748	577,368	972	45,684	0	0	623,052
Total Disclosures							4,599,175

[23] Recordkeeping and disclosure burden estimates for Regulation M are more substantial for motor vehicle leases than for other leases, including burden estimates based on market changes and regulatory definitions of coverage. Based on industry information, the estimates for recordkeeping and disclosure costs assume the following: 90% managerial, and 10% skilled technical. As noted above, for purposes of PRA burden calculations for Regulations B, E, M, and Z, and given the different types of motor vehicle dealers, the FTC is including in its estimates burden for all of them.

REGULATION M—RECORDKEEPING AND DISCLOSURES—COST—Continued

Required Task	Managerial		Skilled Technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($122/hr.)	
Total Recordkeeping and Disclosures	.....	.....	.....	.....	.....	.....	6,535,193

4. Regulation Z

The TILA (Truth In Lending Act) was enacted to foster comparison credit shopping and informed credit decision-making by requiring creditors and others to provide accurate disclosures regarding the costs and terms of credit to consumers. Regulation Z implements the TILA, establishing disclosure requirements to assist consumers and recordkeeping requirements to assist agencies with enforcement. These requirements pertain to open-end and closed-end credit and apply to various types of entities, including mortgage companies; finance companies; auto dealerships; private education loan companies; merchants who extend credit for goods or services; credit advertisers; acquirers of mortgages; and others. Additional requirements also exist in the mortgage area, including for high cost mortgages, higher-priced mortgage loans,[24] ability to pay of mortgage consumers, mortgage servicing, loan originators, and certain integrated mortgage disclosures. FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 430,762 entities subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per entity with 0.25 additional hours per entity for 3,650 entities (ability to pay), and 5 additional hours per entity for 4,500 entities (loan originators). This yields a total annual recordkeeping burden of 561,866 hours. Burden estimates relating to the disclosures required under Regulation Z and labor cost estimates are provided in the tables below.

Burden Totals

Recordkeeping: 561,866 annual hours; $13,765,727, associated annual labor costs.

Disclosures: 7,854,575 annual hours; $384,097,822, associated annual labor costs.

REGULATION Z—DISCLOSURES—BURDEN HOURS

Disclosures [1]	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Open-end credit:							
Initial terms	23,650	.75	17,738	10,500,600	.375	65,629	83,367
Initial terms—prepaid accounts	3	[2] 4 × 1	12	[3] 3 × 78,667	.125	492	504
Rescission notices	750	.5	375	3,750	.25	16	391
Subsequent disclosures	4,650	.75	3,488	23,250,000	.188	72,850	76,338
Subsequent disclosures—prepaid accounts	3	[4] 4 × 1	12	[5] 3 × 78,667	.0625	246	258
Periodic statements	23,650	.75	17,738	788,325,450	.0938	1,232,415	1,250,153
Periodic statements—prepaid accounts	3	[6] 40 × 1	120	[7] 3 × 944,000	.03125	1,475	1,595
Error resolution	23,650	.75	17,738	2,104,850	6	210,485	228,223
Error resolution—prepaid accounts follow-up	3	[8] 4 × 1	12	[9] 3 × 1,180	15	885	897
Credit and charge card accounts	10,250	.75	7,688	5,125,000	.375	32,031	39,719
Credit and charge card accounts—prepaid accounts	3	[10] 4 × 1	12	[11] 3 × 12	240	144	156
Settlement of estate debts	23,650	.75	17,738	496,650	.375	3,104	20,842
Special credit card requirements	10,250	.75	7,688	5,125,000	.375	32,031	39,719
Home equity lines of credit	750	.5	375	5,250	.25	22	397
Home equity lines of credit high-cost mortgages	250	2	500	1,500	2	50	550
College student credit card marketing—ed. institutions	1,350	.5	675	81,000	.25	338	1,013
College student credit card marketing—card issuer reports	150	.75	113	4,500	.75	56	169
Posting and reporting of credit card agreements	10,250	.75	7,688	5,125,000	.375	32,031	39,719
Posting and reporting of prepaid account agreements	3	[12] .75 × 1	2	[13] 3 × 5	2.5	1	3
Advertising	38,650	.75	28,988	115,950	.75	1,449	30,437
Advertising—prepaid accounts	3	[14] 20 × 1	60	N/A	.....	.....	60
Advertising—prepaid accounts Updates	3	[15] 0.2 × 5	3	N/A	.....	.....	3
Sale, transfer, or assignment of mortgages	500	.5	250	500,000	.25	2,083	2,333
Appraiser misconduct reporting	301,150	.75	225,863	6,023,000	.375	37,644	263,507
Mortgage servicing	1,500	.75	1,125	150,000	.5	1,250	2,375
Loan originators	2,250	2	4,500	22,500	5	1,875	6,375
Closed-end credit:							
Credit disclosures	280,762	.75	210,572	112,304,800	2.25	4,211,430	4,422,002
Rescission notices	3,650	.5	1,825	5,475,000	1	91,250	93,075

[24] While Regulation Z also requires the creditor to provide a short written disclosure regarding the appraisal process for higher-priced mortgage loans, the disclosure is provided by the CFPB. As a result, it is not a ''collection of information'' for PRA purposes (*see* 5 CFR 1320.3(c)(2)). It is thus excluded from the burden estimates below.

REGULATION Z—DISCLOSURES—BURDEN HOURS—Continued

Disclosures [1]	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/ monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Redisclosures	101,150	.5	50,575	505,750	2.25	18,966	69,541
Integrated mortgage disclosures	3,650	10	36,500	10,950,000	3.5	638,750	675,250
Variable rate mortgages	3,650	1	3,650	365,000	1.75	10,646	14,296
High cost mortgages	1,750	1	1,750	43,750	2	1,458	3,208
Higher priced mortgages	1,750	1	1,750	14,000	2	467	2,217
Reverse mortgages	3,025	.5	1,513	15,125	1	252	1,765
Advertising	205,762	.5	102,881	2,057,620	1	34,294	137,175
Private education loans	75	.5	38	30,000	1.5	750	788
Sale, transfer, or assignment of mortgages	48,850	.5	24,425	2,442,500	.25	10,177	34,602
Ability to pay/qualified mortgage	3,650	.75	2,738	0	0	0	2,738
Appraiser misconduct reporting	301,150	.75	225,863	6,023,000	.375	37,644	263,507
Mortgage servicing	3,650	1.5	5,475	730,000	2.75	33,458	38,933
Loan originators	2,250	2	4,500	22,500	5	1,875	6,375
Total open-end credit							2,089,103
Total closed-end credit							5,765,472
Total credit							7,854,575

[1] Regulation Z requires disclosures for closed-end and open-end credit. TILA and Regulation Z now cover credit up to $69,500 plus an annual adjustment (except that real estate credit and private education loans are covered regardless of amount).
[2] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[3] This figure lists the number of entities followed by the number of responses or programs each.
[4] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[5] This figure lists the number of entities followed by the number of responses or programs each.
[6] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[7] This figure lists the number of entities followed by the number of responses or programs each.
[8] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[9] This figure lists the number of entities followed by the number of responses or programs each.
[10] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[11] This figure lists the number of entities followed by the number of responses or programs each.
[12] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[13] This figure lists the number of entities followed by the number of responses or programs each.
[14] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.
[15] Burden hours are on a per program basis. Individual burden hours are listed first, followed by the number of programs.

REGULATION Z—RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
Recordkeeping	0	$0	56,187	$2,640,789	505,679	$11,124,938	$13,765,727
Open-end credit Disclosures:							
Initial terms	8,337	559,242	75,030	3,526,410	0	0	4,085,652
Initial terms—prepaid accounts	50	3,300	454	21,338	0	0	24,638
Rescission notices	39	2,574	352	16,544	0	0	19,118
Subsequent disclosures	7,634	503,844	68,704	3,229,088	0	0	3,732,932
Subsequent disclosures—prepaid accounts	26	1,716	232	10,904	0	0	12,620
Periodic statements	125,015	8,250,990	1,125,138	52,881,486	0	0	61,132,476
Periodic statements—prepaid accounts	159	10,494	1,436	67,492	0	0	77,986
Error resolution	22,822	1,506,252	205,401	9,653,847	0	0	11,160,099
Error resolution—prepaid accounts follow-up	90	5,940	807	37,929	0	0	43,869
Credit and charge card accounts	3,972	262,152	35,747	1,680,109	0	0	1,942,261
Credit and charge card accounts—prepaid accounts	16	1,056	140	6,580	0	0	7,636
Settlement of estate debts	2,084	137,544	18,758	881,626	0	0	1,019,170
Special credit card requirements	3,972	262,152	35,747	1,680,109	0	0	1,942,261
Home equity lines of credit	40	2,640	357	16,779	0	0	19,419
Home equity lines of credit—high cost mortgages	55	3,630	495	23,265	0	0	26,895
College student credit card marketing—ed institutions	101	6,666	912	42,864	0	0	49,530
College student credit card marketing—card issuer reports	17	1,122	152	7,144	0	0	8,266
Posting and reporting of credit card agreements	3,972	262,152	35,747	1,680,109	0	0	1,942,261
Posting and reporting of prepaid accounts	1	66	2	94	0	0	160
Advertising	3,044	200,904	27,393	1,287,471	0	0	1,488,375
Advertising—prepaid accounts	6	396	54	2,538	0	0	2,934
Advertising—prepaid accounts Updates	1	66	2	94	0	0	160
Sale, transfer, or assignment of mortgages	233	15,378	2,100	98,700	0	0	114,078
Appraiser misconduct reporting	26,351	1,739,166	237,156	11,146.332	0	0	12,885,498
Mortgage servicing	238	15,708	2,137	100,439	0	0	116,147

REGULATION Z—RECORDKEEPING AND DISCLOSURES—COST—Continued

Required task	Managerial		Skilled technical		Clerical		Total cost ($)
	Time (hours)	Cost ($66/hr.)	Time (hours)	Cost ($47/hr.)	Time (hours)	Cost ($22/hr.)	
Loan originators	638	42,108	5,737	269,639	0	0	311,747
Total open-end credit							102,166,188
Closed-end credit Disclosures:							
Credit disclosures	442,200	29,185,200	3,979,802	187,050,694	0	0	216,235,894
Rescission notices	9,308	614,328	83,767	3,937,049	0	0	4,551,377
Redisclosures	6,954	458,964	62,587	2,941,589	0	0	3,400,553
Integrated mortgage disclosures	67,525	4,456,650	607,725	28,563,075	0	0	33,019,725
Variable rate mortgages	1,430	94,380	12,866	604,702	0	0	699,082
High cost mortgages	321	21.186	2,887	135,689	0	0	156,875
Higher priced mortgages	222	14,652	1,995	93,765	0	0	108,417
Reverse mortgages	177	11,682	1,588	74,636	0	0	86,318
Advertising	13,718	905,388	123,457	5,802,479	0	0	6,707,867
Private education loans	79	5,214	709	33,323	0	0	38,537
Sale, transfer, or assignment of mortgages	3,460	228,360	31,142	1,463,674	0	0	1,692,034
Ability to pay/qualified mortgage	274	18,084	2,464	115,808	0	0	133,892
Appraiser misconduct reporting	26,351	1,739,166	237,156	11,146,332	0	0	12,885,498
Mortgage servicing	3,893	256,938	35,040	1,646,880	0	0	1,903,818
Loan originators	638	42,108	5,737	269,639	0	0	311,747
Total closed-end credit							281,931,634
Total Disclosures							384,097,822
Total Recordkeeping and Disclosures							397,863,549

Request for Comment

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before September 30, 2024. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Regs BEMZ Rule, PRA Comment, P085405,'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 30, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–16970 Filed 7–31–24; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0080]
[Docket No. 2024–0001; Sequence No. 4]

Submission for OMB Review; General Services Administration Acquisition Regulation; Release of Claims for Construction and Building Service Contracts

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection regarding release of claims for final payment under construction and building services contracts.

DATES: Submit comments on or before: September 3, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Bryon Boyer, Procurement Analyst, at *gsarpolicy@gsa.gov* or 817–850–5580.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) requires construction and building services contractors to submit a release of claims before final payment is made to ensure contractors are paid in accordance with their contract requirements and for work performed. GSA Form 1142, Release of Claims is used to achieve uniformity and consistency in the release of claims process.

B. Annual Reporting Burden

Respondents: 1,427.
Responses per Respondent: 1.
Annual Responses: 1,427.
Hours per Response: 0.50.
Total Burden Hours: 714.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 89 FR 42470 on May 15, 2024. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division (MVCB), at *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0080; Release of Claims for Construction and Building Service Contracts, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–16981 Filed 7–31–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Blood-Based Tests for Multiple Cancer Screening: A Systematic Review

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submission.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Blood-based Tests for Multiple Cancer Screening: A Systematic Review,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before September 3, 2024.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Blood-based Tests for Multiple Cancer Screening: A Systematic Review.* AHRQ is conducting this review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Blood-based Tests for Multiple Cancer Screening: A Systematic Review.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/cell-free-dna/protocol.*

This is to notify the public that the EPC Program would find the following information on *Blood-based Tests for Multiple Cancer Screening: A Systematic Review* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study

types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://effectivehealthcare.ahrq.gov/email-updates*.

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What is the effectiveness of screening with blood-based multicancer screening tests (MCST) on cancer-specific mortality and all-cause mortality?

KQ 2a: What is the effectiveness of screening with MCSTs on the cumulative detection of cancer overall and by cancer type?

KQ 2b: What is the effectiveness of screening with MCSTs on the cumulative detection of late-stage cancer (*i.e.,* stage shift) overall and by cancer type?

KQ 3: What is the accuracy of MCSTs for detection of cancer and does accuracy vary by cancer type or stage?

KQ 4: What are the harms of screening with MCSTs?

KQ 5: What are the harms of the evaluation and additional testing following a positive MCST or with surveillance following a negative evaluation after a positive MCST?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)

[Detailed inclusion and exclusion criteria for systematic review on blood-based tests for multiple cancer screening]

Inclusion criteria	Exclusion criteria
Population	
KQs 1, 2, 4, 5 ..... Asymptomatic people 18 years of age or older ..... *KQ 3:* People 18 years of age or older with either (1) biopsy-confirmed cancer or (2) who are asymptomatic without suspicion for cancer (*i.e.,* ''healthy'' individuals).	*All KQ:* People younger than 18 years of age; other than human populations (*e.g.,* animal or in vitro laboratory studies). *KQs 1, 2, 4, 5:* Adults with active cancer; adults undergoing evaluation for suspected cancer or cancer recurrence; adults with a history of invasive or hematologic cancer (other than nonmelanoma skin cancer) within the previous 3 years or a history of untreated cancer. *KQ 3:* Adults undergoing diagnostic evaluation for possible cancer or cancer recurrence.
Intervention	
KQs 1, 2, 3, 4 ..... • Blood tests used for the screening of at least 2 different types of cancer; tests using any analytes with any technology are eligible. • Tests that were designed for cancer prognosis or surveillance in those with cancer or who have completed cancer treatment (*i.e.,* evaluation for minimal residual disease) are eligible as long as they are being evaluated in an eligible population as defined above. • Blood tests used in combination with other tests such as imaging are eligible. • MCSTs used instead of or in addition to usual care screening are eligible. We define usual care screening as follows: mammography (breast), direct visualization such as colonoscopy or stool-based tests (colorectal), low-dose computed tomography (lung), cytology, human papilloma virus testing (cervical), and prostate specific antigen (prostate). *KQ 5:* Tests or procedures (imaging, tissue biopsy, blood, urine, or cerebrospinal fluid) to evaluate positive signal(s) resulting from an MCST or procedures used to surveil patients who have a negative evaluation after a positive MCST signal.	*KQs 1, 2, 3, 4:* Tests that are not blood based (*e.g.,* tissue, saliva, urine, or other bodily fluids). *KQ 5:* Tests or interventions not performed as a result of a positive MCST.
Comparator	
KQs 1, 2, 4 ..... • No screening test ..... • Usual care cancer screening as defined above ..... *KQ 3:* Tissue evaluation for confirmation of cancer; healthy asymptomatic status for controls. *KQ 5:* No comparator required	*KQs 1, 2, 4:* No comparator group. *KQ 3:* No reference standard for comparison. *KQ 5:* Studies without a comparator group will not be excluded.

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)—Continued

[Detailed inclusion and exclusion criteria for systematic review on blood-based tests for multiple cancer screening]

Inclusion criteria	Exclusion criteria
Outcomes	
KQ 1: Cancer mortality overall and by cancer type, all-cause mortality, quality of life, functional status. *KQ 2a:* Cumulative detection of cancer overall and by cancer type ..... *KQ 2b:* Cumulative detection of late-stage cancer overall and by cancer type (*i.e.,* Stage III or IV or organ-specific definition of late stage); distribution of cancer stage at diagnosis (*i.e.,* stage shift). *KQ 3:* Accuracy (sensitivity, false negatives, specificity, false positives, predictive value) by cancer type and by cancer stage. *KQ 4:* Psychosocial and emotional distress including anxiety and worry, false reassurance resulting in decrease in receipt of usual care screening or change in health behaviors associated with cancer (alcohol, tobacco, drug use, diet, physical activity), overdiagnosis, out-of-pocket patient costs, patient financial toxicity, and impact on insurability. *KQ 5:* Radiation exposure from imaging, harms from invasive procedures, other adverse effects from evaluation that occur after a positive MCST, or out-of-pocket patient costs, patient financial toxicity, and impact on insurability.	Outcomes not specifically indicated as included. Composite measures composed of both included and excluded outcomes will be included but considered only in sensitivity analyses.
Timing	
KQ 1: At least 5 years of followup ..... *KQs 2, 4, 5:* any timing ..... *KQ 3:* At least 1 year of followup for prediagnostic performance designs.[a] For diagnostic performance designs, controls must be considered cancer free at the time of the sample.	*KQ 1:* Studies with less than 5 years of followup.
Setting	
• Recruitment from outpatient clinical settings, including primary care or specialty care, community-based or public health settings, electoral rolls, or other population-based registries. • Countries with a United Nations Human Development Index of *high* or *very high* (Appendix A).	• Acute care settings, inpatient care settings. • Countries with a United Nations Human Development Index of less than *high*.
Study Design	
KQs 1, 2, 4, 5: Randomized controlled trials; controlled trials ..... *KQs 1, 2:* Registered NRSIs with 1 or more eligible benefit outcomes listed on study registration[b]. *KQs 4, 5:* Unregistered NRSIs are also eligible ..... *KQ 3:* Studies that provide data related to test accuracy; both prediagnostic test performance and diagnostic test performance designs are eligible. However, only diagnostic performance designs conducted in external validation cohorts are eligible. Further, if results for multiple variations of the test are reported by authors, only results from the test version selected for future commercial use or for evaluation in future intervention studies will be eligible.	*For all KQ:* Modeling studies, case series, case reports, in vitro lab studies, studies designed to assess analytic validity, narrative reviews, systematic reviews (reviews will not be included but will be manually reviewed to identify primary research studies that the search may have missed). *KQs 1, 2:* Cohort studies that have not been registered or that report eligible outcomes that were not included in the study's registration[b] studies designed with a sample size that was not based on outcomes related to cancer detection or mortality. *KQ 3:* Accuracy results derived from discovery, development, internal validation, or split sample cohorts are not eligible because multiple analytes, technologies, or AI classifiers are being evaluated to develop the test and these results do not reflect the final state of the test that would be used in routine practice.
Language	
English	Languages other than English.

[a] KQ 3 prediagnostic accuracy performance studies that use disease-free longitudinal followup as a reference standard should have a minimum of 1-year followup.

[b] Refers to study registration in *ClinicalTrials.gov* database, or another study registry such as those included in the World Health Organization International Clinical Trials Registry Platform.

KQ = key question; MCST = multiple cancer screening test; NRSI = non-randomized study of interventions.

Dated: July 25, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–16973 Filed 7–31–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following 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 Institute on Aging Special Emphasis Panel; Postbaccalaureate and Summer Research Education in AD/ADRD.

Date: October 29, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Ln., Rockville, MD 20852 (Virtual Meeting).

Contact Person: Lisa-Marie Tisdale Rowell, Ph.D., Scientific Research Officer, Scientific Review Branch, National Institute of Health, National Institute on Aging, 5601 Fishers Lane, Rockville, MD 20852, RM 1007G, (301) 594–5622, *wigfalllt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 26, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–16947 Filed 7–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Electronic Individual Development Plan (eIDP) (National Eye Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Eye Institute of the National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Cesar E. Perez-Gonzalez, Training Director, Office of the Scientific Director, National Eye Institute, NIH, Building 31, Room 6A22, MSC 0250, Bethesda, Maryland 20892 or call non-toll-free number (301) 451–6763 or Email your request, including your address to: *cesarp@nei.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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 minimizes 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.

Proposed Collection Title: Electronic Individual Development Plans, 0925–0772 extension, expiration date 10/31/2024, National Eye Institute (NEI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Eye Institute's (NEI) Office of the Scientific Director (OSD) goal is to train the next generation of vision researchers and ophthalmologists. Trainees who participate in NEI research come with different levels of education (student, postbaccalaureate, predoctoral including graduate and medical students, postdoctoral fellows) and for different amounts of time (6 months to 5 years). Training at the NEI focuses on scientific and professional skill development. To enhance their chances of obtaining their ideal career, completing an annual Individual Development Plan (IDP) is an important step in helping a trainee's career and professional development and is standard practice in graduate and postdoctoral education. An IDP is an effective tool for trainees to think about their career goals and skills needed to achieve them during their time at the NEI. Trainees work together with their research mentor to organize and summarize their research projects, consider career goals, and set training goals and expectations, both for the mentee and mentor.

This information collection request is to implement an electronic Individual Development Plan (eIDP). The data collected comes from a detailed questionnaire focused on responses to professional goals and expectations while they are at the NEI. It is expected that the trainees will complete the eIDP annually and by doing so, it will help enhance the effectiveness of their training by setting clear goals that can be monitored not only by the trainee themselves but also by their mentor, the Training Director, and their Administrative Officer. In addition to this eIDP, the system will also implement an electronic exit survey. The data collected comes from a detailed questionnaire focused on responses to questions focused on trainee mentoring and professional experiences at the NEI as well as their plans after they depart. It is expected that the trainees will complete at the end of their tenure and that by doing so, the NEI Training Program can learn about ways to improve career development opportunities for future trainees as well as learn more about trainee job choices to better advise fellows. Additionally, we can use the survey to help determine mentor effectiveness and help identify problems in mentoring at the NEI.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 450.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
eIDP	150	1	2	300
Exit Survey Part 1	150	1	30/60	75
Exit Survey Part 2	150	1	30/60	75
Total	150	150	3	450

Dated: July 25, 2024.

Cesar E. Perez-Gonzalez,

Training Director, National Eye Institute, National Institutes of Health.

[FR Doc. 2024–16917 Filed 7–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed by clicking on the links below.

Name of Committee: President's Cancer Panel.

Date: September 12, 2024.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: Developing and Retaining a Robust and Diverse Cancer Workforce: Challenges and Opportunities Across the National Cancer Program.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 11A48, Rockville, MD 20850 (Virtual Meeting), Access to Meeting: *https://nci.rev.vbrick.com/#/webcasts/presidentscancerpanel-meet1.*

Date: September 13, 2024.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: Developing and Retaining a Robust and Diverse Cancer Workforce: Challenges and Opportunities Across the National Cancer Program.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 11A48, Rockville, MD 20850 (Virtual Meeting), Access to Meeting: *https://nci.rev.vbrick.com/#/webcasts/presidentscancerpanel-meet2.*

Contact Person: Samantha L. Finstad, Ph.D., Executive Secretary, President's Cancer Panel, Office of the Director, National Cancer Institute, NIH, 31 Center Drive, Room 11A30B, MSC 2590, Bethesda, MD 20892, 240–276–6460, *samantha.finstad@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://deainfo.nci.nih.gov/advisory/pcp/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 26, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–16949 Filed 7–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Flanagan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list.*

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23,

2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare *, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295, (Formerly: Legacy Laboratory Services Toxicology MetroLab)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc.*, 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories continued under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory as meeting the minimum standards of the current Mandatory Guidelines published in the **Federal Register**. After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program. DOT established this process in July 1996 (61 FR 37015) to allow foreign laboratories to participate in the DOT drug testing program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2024–16968 Filed 7–31–24; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2451]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Coconino	City of Flagstaff (23–09–0441P)	The Honorable Becky Daggett, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001	Community Development Department, 211 West Aspen Avenue, Flagstaff, AZ 86001	*https://msc.fema.gov/portal/advanceSearch*	Oct. 15, 2024	040020
Maricopa	City of El Mirage (23–09–0223P)	The Honorable Alexis Hermosillo, Mayor, City of El Mirage, 10000 North El Mirage Road, El Mirage, AZ 85335	City Hall, 10000 North El Mirage Road, El Mirage, AZ 85335	*https://msc.fema.gov/portal/advanceSearch*	Oct. 11, 2024	040041

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Maricopa	City of Glendale (23–09–0794P)	The Honorable Jerry P. Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301	*https://msc.fema.gov/portal/advanceSearch*	Sep. 27, 2024	040045
Maricopa	City of Surprise (23–09–0744P)	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Suprise, AZ 85374	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Suprise, AZ 85374	*https://msc.fema.gov/portal/advanceSearch*	Oct. 25, 2024	040053
Maricopa	Town of Youngtown (23–09–0223P)	The Honorable Michael LeVault, Mayor, Town of Youngtown, 12030 Clubhouse Square, Youngtown, AZ 85363	Town Hall, 12030 Clubhouse Square, Youngtown, AZ 85363	*https://msc.fema.gov/portal/advanceSearch*	Oct. 11, 2024	040057
Maricopa	Unincorporated Areas of Maricopa County (23–09–0223P)	The Honorable Jack Sellers, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009	*https://msc.fema.gov/portal/advanceSearch*	Oct. 11, 2024	040037
Maricopa	Unincorporated Areas of Maricopa County (23–09–0794P)	The Honorable Jack Sellers, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009	*https://msc.fema.gov/portal/advanceSearch*	Sep. 27, 2024	040037
Pima	Town of Oro Valley (22–09–1051P)	The Honorable Joe Winfield, Mayor, Town of Oro Valley, 11000 North La Cañada Drive, Oro Valley, AZ 85737	Planning and Zoning Department, 11000 North La Cañada Drive, Oro Valley, AZ 85737	*https://msc.fema.gov/portal/advanceSearch*	Oct. 2, 2024	040109
Pima	Unincorporated Areas of Pima County (22–09–1051P)	The Honorable Adelita Grijalva, Chair, Board of Supervisors, Pima County, 33 North Stone Avenue, 11th Floor, Tucson, AZ 85701	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701	*https://msc.fema.gov/portal/advanceSearch*	Oct. 2, 2024	040073
Yavapai	Town of Prescott Valley (23–09–1074P)	The Honorable Kell Palguta, Mayor, Town of Prescott Valley, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314	*https://msc.fema.gov/portal/advanceSearch*	Sep. 13, 2024	040121
California:						
Riverside	City of Corona (23–09–0763P)	The Honorable Tom Richins, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882	Public Works Department, 400 South Vicentia Avenue, Corona, CA 92882	*https://msc.fema.gov/portal/advanceSearch*	Oct. 29, 2024	060250
Riverside	City of Hemet (23–09–0848P)	The Honorable Joe Males, Mayor, City of Hemet, 445 East Florida Avenue, Hemet, CA 92543	Engineering Department, 510 East Florida Avenue, Hemet, CA 92543	*https://msc.fema.gov/portal/advanceSearch*	Sep. 27, 2024	060253
Riverside	City of Perris (23–09–1357P)	The Honorable Michael M. Vargas, Mayor, City of Perris, 101 North D Street, Perris, CA 92570	Engineering Department, 24 South D Street, Suite 100, Perris, CA 92570	*https://msc.fema.gov/portal/advanceSearch*	Sep. 23, 2024	060258
Riverside	Unincorporated Areas of Riverside County (23–09–0848P)	The Honorable Chuck Washington, Chair, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501	Riverside County, Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501	*https://msc.fema.gov/portal/advanceSearch*	Sep. 27, 2024	060245
San Diego	City of San Diego (23–09–1115P)	The Honorable Todd Gloria, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101	Development Services Department, 1222 1st Avenue, MS 301, San Diego, CA 92101	*https://msc.fema.gov/portal/advanceSearch*	Nov. 5, 2024	060295
San Diego	Unincorporated Areas of San Diego County (23–09–1385P)	The Honorable Nora Vargas, Chair, Board of Supervisors, San Diego County, 1600 Pacific Highway, Room 335, San Diego, CA 92101	San Diego County Flood Control District, Department of Public Works, 5510 Overland Avenue, Suite 410, San Diego, CA 92123	*https://msc.fema.gov/portal/advanceSearch*	Nov. 6, 2024	060284

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
San Mateo	City of Redwood City (23–09–0500P)	The Honorable Jeff Gee, Mayor, City of Redwood City, 1017 Middlefield Road, Redwood City, CA 94063	City Hall, 1017 Middlefield Road, Redwood City, CA 94063	*https://msc.fema.gov/portal/advanceSearch*	Oct. 2, 2024	060325
Ventura	City of Simi Valley (23–09–0719P)	The Honorable Fred D. Thomas, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063	*https://msc.fema.gov/portal/advanceSearch*	Oct. 22, 2024	060421
Ventura	Unincorporated Areas of Ventura County (24–09–0380P)	The Honorable Kelly Long, Chair, Board of Supervisors, Ventura County, 1203 Flynn Road, Suite 220, Camarillo, CA 93012	Ventura County, Public Works Agency, 800 South Victoria Avenue, Ventura, CA 93009	*https://msc.fema.gov/portal/advanceSearch*	Nov. 4, 2024	060413
Yolo	City of Winters (23–09–1251P)	The Honorable Bill Biasi, Mayor, City of Winters, 318 1st Street, Winters, CA 95694	City Hall, 318 1st Street, Winters, CA 95694	*https://msc.fema.gov/portal/advanceSearch*	Oct. 10, 2024	060425
Yolo	Unincorporated Areas of Yolo County (23–09–0598P)	The Honorable Lucas Frerichs, Chair, Board of Supervisors, Yolo County, 625 Court Street, Room 204, Woodland, CA 95695	Yolo County, Department of Planning and Public Works, 292 West Beamer Street, Woodland, CA 95695	*https://msc.fema.gov/portal/advanceSearch*	Sep. 19, 2024	060423
Yolo	Unincorporated Areas of Yolo County (23–09–1251P)	The Honorable Angel Barajas, Chair, Board of Supervisors, Yolo County, 625 Court Street, Woodland, CA 95695	Yolo County, Department of Planning and Public Works, 292 West Beamer Street, Woodland, CA 95695	*https://msc.fema.gov/portal/advanceSearch*	Oct. 10, 2024	060423
Florida: Lake	City of Leesburg (24–04–2358P)	The Honorable Jimmy Burry, Mayor, City of Leesburg, City Hall, 501 West Meadow Street, Leesburg, FL 34748	Public Works Department, 220 South 14th Street, Leesburg, FL 34748	*https://msc.fema.gov/portal/advanceSearch*	Oct. 28, 2024	120136
Idaho: Ada	City of Boise (23–10–0877P)	The Honorable Lauren McLean, Mayor, City of Boise, P.O. Box 500, Boise, ID 83701	City Hall, 150 North Capitol Boulevard, 2nd Floor, Boise, ID 83701	*https://msc.fema.gov/portal/advanceSearch*	Oct. 31, 2024	160002
Indiana						
Johnson	Unincorporated Areas of Johnson County (23–05–1894P)	The Honorable Brian Baird, Chair, Johnson County Board of Commissioners, 86 West Court Street, Franklin, IN 46131	Johnson County Courthouse Annex Building, 86 West Court Street, Franklin, IN 46131	*https://msc.fema.gov/portal/advanceSearch*	Oct. 4, 2024	180111
Monroe	City of Bloomington (22–05–3348P)	The Honorable Kerry Thomson, Mayor, City of Bloomington, 401 North Morton Street, Suite 210, Bloomington, IN 47404	Planning Department, 401 North Morton Street, Bloomington, IN 47402	*https://msc.fema.gov/portal/advanceSearch*	Sep. 16, 2024	180169
Monroe	Unincorporated Areas of Monroe County (22–05–3348P)	The Honorable Julie Thomas, President, Monroe County Board of Commissioners, 100 West Kirkwood Avenue, Room 323, Bloomington, IN 47404	Monroe County Planning Department, 501 North Morton Street, Suite 224, Bloomington, IN 47404	*https://msc.fema.gov/portal/advanceSearch*	Sep. 16, 2024	180444
Shelby	City of Shelbyville (24–05–0650P)	The Honorable Scott Furgeson, Mayor, City of Shelbyville, 44 West Washington Street, Shelbyville, IN 46176	Planning Commission, 44 West Washington Street, Shelbyville, IN 46176	*https://msc.fema.gov/portal/advanceSearch*	Nov. 4, 2024	180236
Shelby	Unincorporated Areas of Shelby County (24–05–0650P)	Don Parker, County Commissioner President, Shelby County, 25 West Polk Street, Room 206, Shelbyville, IN 46176	Shelby County Plan Commission, 25 West Polk Street, Shelbyville, IN 46176	*https://msc.fema.gov/portal/advanceSearch*	Nov. 4, 2024	180235
Michigan:						
Berrien	Charter Township of Benton (24–05–0176P)	Cathy Yates, Supervisor, Charter Township of Benton, 1725 Territorial Road, Benton Harbor, MI 49022	Township Office, 1725 Territorial Road, Benton Harbor, MI 49022	*https://msc.fema.gov/portal/advanceSearch*	Sep. 11, 2024	260031

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Berrien	Charter Township of St. Joseph (24–05–0176P)	Roger Seely, Supervisor, Charter Township of St. Joseph, 3000 Washington Avenue, St. Joseph, MI 49085	Township Hall, 3000 Washington Avenue, St. Joseph, MI 49085	*https://msc.fema.gov/portal/advanceSearch*	Sep. 11, 2024	260045
Berrien	City of Benton Harbor (24–05–0176P)	The Honorable Marcus Muhammad, Mayor, City of Benton Harbor, 200 East Wall Street, Benton Harbor, MI 49022	City Hall, 200 East Wall Street, Benton Harbor, MI 49022	*https://msc.fema.gov/portal/advanceSearch*	Sep. 11, 2024	260032
Berrien	City of St. Joseph (24–05–0176P)	The Honorable Brook Thomas, Mayor, City of St. Joseph, 700 Broad Street, St. Joseph, MI 49085	City Hall, 700 Broad Street, St. Joseph, MI 49085	*https://msc.fema.gov/portal/advanceSearch*	Sep. 11, 2024	260044
Van Buren	Township of Covert (23–05–2389P)	Daywi Cook, Township Supervisor Township of Covert, 73943 East Lake Street, Covert, MI 49043	Township Hall, 73943 East Lake Street, Covert, MI 49043	*https://msc.fema.gov/portal/advanceSearch*	Oct. 21, 2024	260259
Minnesota:						
Stearns	City of Melrose (23–05–2796P)	The Honorable Joe Finken, Mayor, City of Melrose, P.O. Box 216, Melrose, MN 56352	Administration Office, 225 East 1st Street North, Melrose, MN 56352	*https://msc.fema.gov/portal/advanceSearch*	Sep. 26, 2024	270450
Stearns	Unincorporated Areas of Stearns County (23–05–2796P)	Tarryl Clark, County Commissioner Chair, Stearns County, 705 Courthouse Square, St. Cloud, MN 56303	Stearns County Administration Center, 705 Courthouse Square, St. Cloud, MN 56303	*https://msc.fema.gov/portal/advanceSearch*	Sep. 26, 2024	270546
Wilkin	City of Nashua (23–05–2401P)	The Honorable Darin Raguse, Mayor, City of Nashua, 613 County Road 19, Nashua, MN 56522	City Hall, 613 County Road 19, Nashua, MN 56522	*https://msc.fema.gov/portal/advanceSearch*	Oct. 3, 2024	270918
Nevada:						
Clark	City of Henderson (23–09–1085P)	The Honorable Michelle Romero, Mayor, City of Henderson, City Hall, 240 South Water Street, Henderson, NV 89015	Public Works Department, 240 South Water Street, Henderson, NV 89015	*https://msc.fema.gov/portal/advanceSearch*	Oct. 3, 2024	320005
Clark	City of Henderson (24–09–0528P)	The Honorable Michelle Romero, Mayor, City of Henderson, City Hall, 240 South Water Street, Henderson, NV 89015	Public Works Department, 240 South Water Street, Henderson, NV 89015	*https://msc.fema.gov/portal/advanceSearch*	Sep. 30, 2024	320005
New York:						
Erie	Town of Orchard Park (23–02–0681P)	Eugene Majchrzak, Supervisor, Town of Orchard Park, 4295 South Buffalo Street, Orchard Park, NY 14127	Village Hall, 4295 South Buffalo Street, Orchard Park, NY 14127	*https://msc.fema.gov/portal/advanceSearch*	Nov. 21, 2024	360255
New Herkimer	Village of Dolgeville (23–02–0219P)	The Honorable Mary E. Puznowski, Mayor, Village of Dolgeville, 41 North Main Street, Dolgeville, NY 13329	Village Hall, 41 North Main Street, Dolgeville, NY 13329	*https://msc.fema.gov/portal/advanceSearch*	Nov. 21, 2024	360301
Ohio:						
Butler	City of Fairfield(23–05–2358P)	The Honorable Mitch Rhodus, Mayor, City of Fairfield, 5350 Pleasant Avenue, Fairfield, OH 45014	City Hall, 5350 Pleasant Avenue, Fairfield, OH 45014	*https://msc.fema.gov/portal/advanceSearch*	Oct. 31, 2024	390038
Butler	City of Hamilton (23–05–2358P)	The Honorable Pat Moeller, Mayor, City of Hamilton, 345 High Street, Suite 780, Hamilton, OH 45011	Department of Community Development, Planning Division, 345 High Street, Suite 370, Hamilton, OH 45011	*https://msc.fema.gov/portal/advanceSearch*	Oct. 31, 2024	390039
Butler	Unincorporated Areas of Butler County (23–05–2358P)	Cindy Carpenter, President, Butler County Board of Commissioners, Government Services Center, 315 High Street, 6th Floor, Hamilton, OH 45011	Butler County Administrative Center Building and Zoning Department, 130 High Street, 1st Floor, Hamilton, OH 45011	*https://msc.fema.gov/portal/advanceSearch*	Oct. 31, 2024	390037

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Warren	City of Mason (23–05–2046P)	The Honorable Diana K. Nelson, CPA, Mayor, City of Mason, 6000 Mason Montgomery Road, Mason, OH 45040	Municipal Building, 6000 Mason Montgomery Road, Mason, OH 45040	*https://msc.fema.gov/portal/advanceSearch*	Sep. 23, 2024	390559
Oregon: Marion	City of Salem (23–10–0633P)	The Honorable Chris Hoy, Mayor, City of Salem, City Council, 555 Liberty Street Southeast, Room 220, Salem, OR 97301	City Hall, 555 Liberty Street Southeast, Room 325, 130 High Street, 1st Floor, Salem, OR 97301	*https://msc.fema.gov/portal/advanceSearch*	Nov. 4, 2024	410167
Texas:						
Dallas	City of Dallas (23–06–1171P)	The Honorable Eric L. Johnson, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201	Department of Public Works, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203	*https://msc.fema.gov/portal/advanceSearch*	Aug. 16, 2024	480171
La Salle	City of Cotulla (24–06–0886P)	The Honorable Javier Garcia, Mayor, City of Cotulla, 117 North Front Street, Cotulla, TX 78014	City Hall, 117 North Front Street, Cotulla, TX 78014	*https://msc.fema.gov/portal/advanceSearch*	Oct. 18, 2024	480431
Wharton	City of El Campo (23–06–0517P)	The Honorable Chris Barbee, Mayor, City of El Campo, 315 East Jackson Street, El Campo, TX 77437	City Hall, 315 East Jackson Street, El Campo, TX 77437	*https://msc.fema.gov/portal/advanceSearch*	Sep. 30, 2024	480653
Wharton	Unincorporated Areas of Wharton County (23–06–0517P)	Phillip Spenrath, County Judge, Wharton County, 100 South Fulton Street, Suite 100, Wharton, TX 77488	Wharton County Courthouse Annex, 315 East Milam, Suite 102, Wharton, TX 77488	*https://msc.fema.gov/portal/advanceSearch*	Sep. 30, 2024	480652
Washington:						
Kittitas	City of Ellensburg (24–10–0037P)	The Honorable Rich Elliott, Mayor, City of Ellensburg, City Hall, 501 North Anderson Street, Ellensburg, WA 98926	City Hall, 501 North Anderson Street, Ellensburg, WA 98926	*https://msc.fema.gov/portal/advanceSearch*	Oct. 16, 2024	530234
Kittitas	Unincorporated Areas of Kittitas County (24–10–0037P)	Laura Osiadacz, Chair, Board of Commissioners, Kittitas County, 205 West 5th Avenue, Suite 108, Ellensburg, WA 98926	Kittitas County Department of Public Works, 411 North Ruby Street Suite 1, Ellensburg, WA 98926	*https://msc.fema.gov/portal/advanceSearch*	Oct. 16, 2024	530095
Wisconsin: Kenosha.	Village of Somers (24–05–0107P)	George Stoner, President, Village of Somers, P.O. Box 197, Kenosha, WI 53171	Village Hall, 7511 12th Street, Kenosha, WI 53144	*https://msc.fema.gov/portal/advanceSearch*	Aug. 29, 2024	550406

[FR Doc. 2024–16957 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2450]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM

and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Boulder	City of Boulder (24–08–0273X).	The Honorable Aaron Brockett, Mayor, City of Boulder, 1777 Broadway, Boulder, CO 80302.	City Hall, 1777 Broadway, Boulder, CO 80302.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2024	080024
DC:						
Washington, DC.	District of Columbia, (23–03–0825P).	The Honorable Muriel Bowser, Mayor, District of Columbia, 1350 Pennsylvania Avenue, Northwest, Washington, DC 20004.	Department of Energy and Environment, 1200 1st Street Northeast, 5th Floor, Washington, DC 20002.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2024	110001
Florida:						
Broward	City of Plantation, (24–04–0898P).	The Honorable Nick Sortal, Mayor, City of Plantation, 400 Northwest 73rd Avenue, Plantation, FL 33317.	City Hall, 400 Northwest 73rd Avenue, Plantation, FL 33317.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2024	120054
Lake	City of Leesburg, (23–04–6313P).	Al Minner, Manager, City of Leesburg, P.O. Box 490630, Leesburg, FL 34749.	Planning and Zoning Department, 204 North 5th Street, Leesburg, FL 34748.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 28, 2024	120136
Lake	City of Leesburg, (24–04–0439P).	Al Minner, Manager, City of Leesburg, P.O. Box 490630, Leesburg, FL 34749.	Planning and Zoning Department, 204 North 5th Street, Leesburg, FL 34748.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 30, 2024	120136
Manatee	Unincorporated areas of Manatee County, (24–04–4428P).	Charlie Bishop, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2024	120153
Manatee	Unincorporated areas of Manatee County, (24–04–4432P).	Charlie Bishop, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2024	120153
Manatee	Unincorporated areas of Manatee County, (24–04–4434P).	Charlie Bishop, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 10, 2024	120153

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Monroe	Unincorporated areas of Monroe County, (24–04–1868P).	The Honorable Holly Merrill Raschein, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2024	125129
Monroe	Unincorporated areas of Monroe County, (24–04–2924P).	The Honorable Holly Merrill Raschein, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 1, 2024	125129
Monroe	Village of Islamorada, (24–04–1608P).	The Honorable Joseph ''Buddy'' Pinder III, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 4, 2024	120424
Orange	Unincorporated areas of Orange County, (24–04–0781P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County, Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 24, 2024	120179
Osceola	Unincorporated areas of Osceola County, (24–04–0625P).	Donald Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 25, 2024	120189
Osceola	Unincorporated areas of Osceola County, (24–04–2482X).	Donald Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2024	120189
Pasco	Unincorporated areas of Pasco County, (23–04–5310P).	Ron Oakley, Chair, Pasco County Board of Commissioners, 37918 Meridian Avenue, Dade City, FL 33525.	Pasco County Building Construction Services Department, 8661 Citizens Drive, Suite 100, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2024	120230
Indiana:						
Lake	Town of Lowell, (23–05–1264P).	Todd Angerman, President, Town of Lowell Council, 501 East Main Street, Lowell, IN 46356.	Town Hall, 501 East Main Street, Lowell, IN 46356.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2024	180137
Lake	Unincorporated areas of Lake County, (23–05–1264P).	Christine Cid, President, Lake County Council, 2293 North Main Street, Crown Point, IN 46307.	Lake County Building, 2293 North Main Street, Crown Point, IN 46307.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2024	180126
North Carolina:						
Durham	City of Durham, (23–04–4657P).	The Honorable Leonardo Williams, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	City Hall, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 10, 2024	370086
Mecklenburg	City of Charlotte, (22–04–5778P).	The Honorable Vi Alexander Lyles, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202.	Stormwater Services Department, 2145 Suttle Avenue, Charlotte, NC 28208.	https://msc.fema.gov/portal/advanceSearch.	Oct. 2, 2024	370159
Pennsylvania:						
Butler	Township of Adams, (23–03–0933P).	Russell R. Ford, Chair, Township of Adams Board of Supervisors, 690 Valencia Road, Mars, PA 16046.	Township Hall, 690 Valencia Road, Mars, PA 16046.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	421415
Butler	Township of Middlesex, (23–03–0933P).	Michael Spreng, Chair, Township of Middlesex Board of Supervisors, 133 Browns Hill Road, Valencia, PA 16059.	Township Hall, 133 Browns Hill Road, Valencia, PA 16059.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	421229
Northampton	Township of Lower Nazareth, (23–03–0866P).	Lori A. Stauffer, Township of Lower Nazareth Manager, 623 Municipal Drive, Nazareth, PA 18064.	Township Hall, 623 Municipal Drive, Nazareth, PA 18064.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 24, 2024	422253
South Carolina:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Richland	City of Forest Acres, (24–04–0460P).	The Honorable Thomas Andrews, Mayor, City of Forest Acres, 5209 North Trenholm Road, Columbia, SC 29206.	City Hall, 5209 North Trenholm Road, Columbia, SC 29206.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 7, 2024	450174
Texas:						
Bell	City of Temple, (23–06–1405P).	The Honorable Tim Davis, Mayor, City of Temple, 2 North Main Street, Suite 103, Temple, TX 76501.	Engineering Department, 3210 East Avenue H, Building A, Suite 107, Temple, TX 76501.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2024	480034
Collin	City of Princeton, (24–06–0140P).	The Honorable Brianna Chacón, Mayor, City of Princeton, 2000 East Princeton Drive, Princeton, TX 75407.	City Hall, 2000 East Princeton Drive, Princeton, TX 75407.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2024	480757
Denton	City of Frisco, (23–06–1600P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	City Hall, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 7, 2024	480134
Denton	Town of Prosper, (23–06–2479P).	The Honorable David F. Bristol, Mayor, Town of Prosper, 250 West 1st Street, Prosper, TX 75078.	Engineering Department, 250 West 1st Street, Prosper, TX 75078.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2024	480141
Denton	Unincorporated areas of Denton County, (23–06–2479P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2024	480774
Ellis	City of Red Oak (24–06–0092P).	The Honorable Mark Stanfill, Mayor, City of Red Oak, P.O. Box 393, Red Oak, TX 75154.	City Hall, 101 South Live Oak Street, Red Oak, TX 75154.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 4, 2024	481650
Ellis	Unincorporated areas of Ellis County, (23–06–1731P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Courts and Administration, 109 South Jackson Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2024	480798
Ellis	Unincorporated areas of Ellis County, (24–06–0092P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Courts and Administration, 109 South Jackson Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 4, 2024	480798
Kaufman	City of Terrell (24–06–0327P).	The Honorable E. Rick Carmona, Mayor, City of Terrell, P.O. Box 310, Terrell, TX 75160.	City Hall, 201 East Nash Street, Terrell, TX 75160.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2024	480416
Tarrant	City of Fort Worth, (23–06–2360P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2024	480596
Tarrant	City of Haltom City, (23–06–2452P).	The Honorable An Truong, Mayor, City of Haltom City, 5024 Broadway Avenue, Haltom City, TX 76117.	Public Works Department, 4200 Hollis Street, Haltom City, TX 76111.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2024	480599

[FR Doc. 2024–16956 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of November 21, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Lake County, South Dakota and Incorporated Areas Docket No.: FEMA–B–2354	
City of Brant Lake	Lake County Courthouse, 200 East Center Street, Madison, SD 57042.
City of Madison	City Hall, 116 West Center Street, Madison, SD 57042.
Town of Nunda	Lake County Courthouse, 200 East Center Street, Madison, SD 57042.
Town of Ramona	Lake County Courthouse, 200 East Center Street, Madison, SD 57042.
Unincorporated Areas of Lake County	Lake County Courthouse, 200 East Center Street, Madison, SD 57042.
Collin County, Texas and Incorporated Areas Docket Nos.: FEMA–B–2142, FEMA–B–2316, and FEMA–B–2359	
City of Dallas	Water Utilities, Stormwater Operations, 2245 Irving Boulevard, Second Floor, Dallas, TX 75207.
City of Plano	Municipal Center, 1520 K Avenue, Suite 250, Plano, TX 75074.

[FR Doc. 2024–16959 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2452]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the

Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before October 30, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2452, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Harrison County, Missouri and Incorporated Areas Project: 19–07–0068S Preliminary Date: August 4, 2023	
City of Bethany	City Hall, 206 North 16th Street, Bethany, MO 64424.
City of Cainsville	City Hall, 1413 Old Mill Road, Cainsville, MO 64632.
City of Gilman City	City Hall, 429 Main Street, Gilman City, MO 64642.
City of New Hampton	City Hall, 212 East Lincoln Street, New Hampton, MO 64471.
City of Ridgeway	City Hall, 606 Main Street, Ridgeway, MO 64481.
Unincorporated Areas of Harrison County	Harrison County Courthouse, 1505 Main Street, Bethany, MO 64424.
Village of Blythedale	Harrison County Courthouse, 1505 Main Street, Bethany, MO 64424.
Village of Eagleville	City Hall, 10028 10th Street, Eagleville, MO 64442.
Village of Mt. Moriah	Harrison County Courthouse, 1505 Main Street, Bethany, MO 64424.

[FR Doc. 2024–16958 Filed 7–31–24; 8:45 am]

BILLING CODE 9111–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2444]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: On July 15, 2024, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table to be used in lieu of the erroneous information. The table provided here represents the proposed flood hazard determinations and communities affected for Nuckolls County, Nebraska and Incorporated Areas.

DATES: Comments are to be submitted on or before October 30, 2024.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2444, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 89 FR 57426 in the July 15, 2024, issue of the **Federal Register**, FEMA published a table titled ''Nuckolls County, Nebraska and Incorporated Areas''. This table contained inaccurate information on the community map repository for the Unincorporated Areas of Nuckolls County featured in the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Nuckolls County, Nebraska and Incorporated Areas Project: 23–07–0003S Preliminary Date: January 31, 2024	
City of Nelson	City Office, 580 South Main Street, Nelson, NE 68961.
Unincorporated Areas of Nuckolls County	Nuckolls County Courthouse, 150 South Main Street, Nelson, NE 68961.
Village of Oak	Village of Oak Clerk's Office, 24 South Nevada Street, Nelson, NE 68961.

[FR Doc. 2024–16955 Filed 7–31–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0113]

Agency Information Collection Activities; Revision of a Currently Approved Collection: MyAppointment

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until September 3, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2009–0024. All submissions received must include the OMB Control Number 1615–0113 in the body of the letter, the agency name and Docket ID USCIS–2009–0024.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on May 10, 2024, at 89 FR 40499, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0024 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* MyAppointment.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. The MyAppointment system allows respondents to access the appointment scheduling system on the USCIS main web page via the ''Make an Appointment'' link. Respondents may also contact USCIS via phone or chat to provide information that will be collected in evaluating the request for appointment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection MyAppointment (electronic/online) is 350,000 and the estimated hour burden per response is 0.1 hours; the estimated total number of respondents for the information collection MyAppointment (phone) is 80,000 and the estimated hour burden per response is 0.15 hours; the estimated total number of respondents for the information collection MyAppointment (web/chat) is 10,000 and the estimated hour burden per response is 0.22 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 49,200 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no estimated total annual cost burden associated with this collection of information, all costs are captured in the information collections that require an appointment.

Dated: July 25, 2024.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–16969 Filed 7–31–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: Citizenship Integration Grant Program (CIGP) Program Evaluation

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 30 days until September 3, 2024.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2024–0003. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2024–0003.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 11, 2024, at 89 FR 25892, allowing for a 60-day public comment period. USCIS did receive three (3) comments in connection with the 60-day notice. USCIS responses to the comments are available in the comment matrix posted in the docket for this information collection.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2024–0003 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Citizenship Integration Grant Program (CIGP) Program Evaluation.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1608; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households and Not-for-profit institutions. The purpose of this information collection is to survey participants and grant recipient staff in the implementation and outcome evaluation of the Citizenship Integration Grant Program (CIGP).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1608, Implementation Evaluation Participant Web Survey is 580 and the estimated hour burden per response is .50 hours; G–1608, Implementation Evaluation Grant Recipient Staff Web Survey is 110 and the estimated hour burden per response is .50 hours; G–1608, Implementation Evaluation Participant Virtual Interview is 48 and the estimated hour burden per response is .75 hours; G–1608, Implementation Evaluation Grant Recipient Staff Virtual Interview is 28 and the estimated hour burden per response is .75 hours;

G–1608, Outcome Evaluation Participant Web Survey is 580 and the estimated hour burden per response is .50 hours; G–1608, Outcome Evaluation Grant Recipient Staff Web Survey is 110 and the estimated hour burden per response is .33 hours; G–1608, Outcome Evaluation Participant Virtual Interview is 48 and the estimated hour burden per response is .75 hours; and G–1608, Outcome Evaluation Grant Recipient Staff Virtual Interview is 28 and the estimated hour burden per response is .75 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 785 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is no estimated total annual cost burden associated with this collection of information.

Dated: July 24, 2024.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–16908 Filed 7–31–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6447–N–02]

Notice of Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee (MHCC)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing

Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda for the meeting of the MHCC Committee, and MHCC Subcommittees to include the following: Structure and Design Subcommittee, Technical Systems Subcommittee and Regulatory Enforcement Subcommittee. The meeting is open to the public and the site is accessible to individuals with disabilities. The agenda provides an opportunity for interested parties to comment on the business before the MHCC and MHCC Subcommittees. The Designated Federal Official (DFO) may adjourn the meeting if it is in the public interest.

DATES: The meeting will be held on September 11, 2024, 8:30 a.m. to 2:30 p.m. Eastern Standard Time (EST) and on September 12, 2024, 9:00 a.m. to 5:00 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in-person. The meeting will be held at Hotel Elkhart by Hilton, 500 South Main Street, Elkhart, IN 46516.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410, telephone (202) 708–6423 (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 and 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.* Individuals who require an alternative aid or service to communicate effectively with HUD should email the point of contact listed above and provide a brief description of their preferred method of communication.

SUPPLEMENTARY INFORMATION:

Background

Notice of these meetings is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. 1009(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment

Interested parties wishing to make comments on the business of the MHCC are encouraged to register on or before Wednesday, September 4, 2024, by contacting Home Innovation Research Labs; *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com* or call 1–888–602–4663. Written comments are encouraged. The MHCC strives to accommodate interested parties' comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the MHCC.

Nine pending Log Items are subject to review, including but not limited to:

Standards for ties, installation, exit facilities and doors, and requirements of Subpart F. The meeting is scheduled for two days to provide sufficient time for thorough consideration. HUD, therefore, strongly encourages active participation by committee members, stakeholders, and other interested parties. The meeting will also allow time for members and other interested parties to visit the Recreational Vehicle and Manufactured Housing Hall of Fame and attend a brief celebration in recognition of the 50th anniversary of the Manufactured Housing Construction and Safety Standards Act of 1974.

Tentative Agenda for the September 2024 Meeting

Wednesday, September 11, 2024

8:30–9:00 a.m. Registration

9:00–9:05 a.m. Call to Order—Chair, Co-Chair, and *Teresa Payne,* Designated Federal Officer (DFO)

9:05–9:25 a.m. Welcome and Opening Remarks

A. Opening Remarks—FHA Commissioner

B. Roll Call—Kevin Kauffman, Administering Organization (AO)

a. Introductions

b. Manufactured Housing Consensus Committee (MHCC) Members

c. U.S. Department of Housing and Urban Development (HUD) Staff

C. Administrative Announcements—Teresa Payne, DFO, and Kevin Kauffman, AO

9:25–9:50 a.m. Public Comment Period (Public Encouraged to Sign Up with AO)

9:50–10:50 a.m. Oliver Technologies and Minute Man Anchors Presentation—Scott Oliver and George Waechter

10:50–11:50 a.m. Structure and Design Subcommittee Meeting (Log 229, 231, 232, and 235)

11:50–1:20 p.m. Lunch

1:20–2:10 p.m. Technical Systems Subcommittee Meeting (Log 227)

2:10–2:20 p.m. Public Comment Period (Public Encouraged to Sign Up with AO)

2:20–2:30 p.m. Daily Wrap Up—DFO and AO

2:30 p.m. *Adjourn for the Day*

3:00–5:00 p.m. Visit RV/MH Hall of Fame (MHCC members are encouraged to attend)

5:00–6:30 p.m. 50th Anniversary Celebration & Networking Exchange

Thursday, September 12, 2024

9:00–9:05 a.m. Reconvene Meeting—Chair and DFO

9:05–9:10 a.m. Call to Order—Chair, Co-Chair, and *Teresa Payne,* Designated Federal Officer (DFO)

9:10–9:20 a.m. Welcome and Opening Remarks

A. Roll Call—Kevin Kauffman, Administering Organization (AO)

a. Introductions

b. Manufactured Housing Consensus Committee (MHCC) Members

c. U.S. Department of Housing and Urban Development (HUD) Staff

B. Administrative Announcements—Teresa Payne, DFO, and Kevin Kauffman, AO

9:20–10:20 a.m. Regulatory Subcommittee Meeting (Log 228, 230, 233, and 234)

10:20–10:40 a.m. Public Comment Period (Public Encouraged to Sign Up with AO)

10:40–12:00 p.m. Review of Current Log and Action Items (Log 227–235) or Subcommittee Meetings if Necessary

12:00–1:30 p.m. Lunch
1:30–1:45 p.m. Public Comment Period (Public Encouraged to Sign Up with AO)
1:45–3:00 p.m. Continue Review of Current Log and Action Items (Log 227–235) or Subcommittee Meetings if Necessary
3:00–3:15 p.m. Break
3:15–4:50 p.m. Continue Review of Current Log and Action Items (Log 227–235) or Subcommittee Meetings if Necessary
4:50–5:00 p.m. Daily Wrap Up—DFO and AO
5:00 p.m. *Adjourn for the Day*

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2024–16967 Filed 7–31–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6477–N–01]

Notice of Annual Factors for Determining Administrative Fees for the Section 8 Housing Choice Voucher, Mainstream, and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces the monthly per unit fee rates for use in determining the on-going administrative fees for public housing agencies (PHAs) administering the Housing Choice Voucher (HCV), Mainstream, Emergency Housing Voucher, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals) programs during calendar year (CY) 2024. PHAs use administrative fees to cover costs associated with administering these programs. Publishing the CY 2024 administrative fees allow PHAs to budget appropriately and is important for PHA record keeping purposes.

DATES: *Applicable* January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontánez, Director, Housing Voucher Financial Management Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4222, Washington, DC 20410–8000, telephone number 202–402–2934 (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.*

SUPPLEMENTARY INFORMATION:

A. Background

This notice provides HUD's methodology used to determine the CY 2024 administrative fee rates by area, which HUD uses to determine PHA administrative fees for the HCV, Mainstream Vouchers, Emergency Housing Voucher (column A rate only), and Moderate Rehabilitation programs, including the Single Room Occupancy (SRO) program for homeless individuals. The HCV Program is the Federal government's major program for assisting very low-income families, persons who are elderly, or persons with disabilities to afford decent, safe, and sanitary housing in the private market. Mainstream Vouchers are tenant-based vouchers under section 8(o) of the U.S. Housing Act of 1937, serving households that include a non-elderly person with a disability. The Emergency Housing Voucher (EHV) program was authorized by the American Rescue Plan Act (ARPA) Public Law 117–2, enacted on March 11, 2021. Through EHV, HUD is providing 68,512 housing choice vouchers to local PHAs to assist individuals and families who are homeless, at-risk of homelessness, fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, or were recently homeless or have a high risk of housing instability. The Moderate Rehabilitation Program provides project-based rental assistance for low-income families and the SRO program provides project-based rental assistance for individuals experiencing homelessness. Both programs have been repealed and no new projects are authorized for development. Assistance is limited to properties previously rehabilitated, with assistance being provided pursuant to a housing assistance payments (HAP) contract between an owner and a PHA.

B. CY 2024 Methodology

For CY 2024, administrative fees are determined based on vouchers leased as of the first day of each month and in accordance with the requirements of the 2024 Appropriations Act (Pub. L. 118–42). This data is extracted from the Voucher Management System (VMS) at the close of each reporting cycle and validated prior to use. For Moderate Rehabilitation, including Single Room Occupancy and HAP contracts, administrative fee eligibility is based on the units under a HAP contract. Administrative fee advances made prior to the 2024 fee rate availability are made whole on a retroactive basis per the information provided in the CY 2024 Administrative Fee Rate Description document available through the following link: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidance_and_notices.*

In the included table, two fee rates are provided for each PHA. The first rate, Column A, applies to the first 7,200 voucher unit months leased in CY 2024. The second rate, Column B, applies to all remaining voucher unit months leased in CY 2024. However, in the case of EHVs, PHAs are allocated the full Column A administrative fee amount for each EHV that is under HAP contract as of the first day of each month in accordance with PIH Notice 2021–15, Emergency Housing Vouchers—Operating Requirements, issued on May 5, 2021. The funding for EHVs, including administrative fee funding, was appropriated through the ARPA, separate and apart from the regular HCV program appropriations provided through HUD's annual appropriations acts. Eligibility for EHVs is limited to the vulnerable populations described earlier, and EHVs may not be reissued after September 30, 2023.

In some cases, the fee rates calculated for CY 2024 are lower than those established for CY 2023. In these cases, the affected PHAs are held harmless at the CY 2023 fee rates.

The fee rates for each PHA generally cover the fees for areas in which the PHA has the greatest proportion of its participants, based on Public Housing Information Center (PIC), or superseding system, data submitted by the PHA. In some cases, PHAs have participants in more than one fee area. If such a PHA chooses, the PHA may request HUD establish a blended fee rate to proportionately consider all areas in which participants are located. Once a blended rate is established, it is used to determine the PHA's fee eligibility for all months in CY 2024. The Implementation of the Federal Fiscal Year (FFY) 2024 Funding Provisions for the Housing Choice Voucher Program describes how to apply for blended fee rates and provides a deadline date for submitting such requests. PIH Notice 2024–16 can be accessed through the following link: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/notices.*

PHAs operating over large geographic areas, defined as multiple counties, may

request a higher administrative fee rate if eligible. The Implementation of the Federal Fiscal Year (FFY) 2024 Funding Provisions for the Housing Choice Voucher Program describes when to apply for higher fee rates and the deadline date for such requests. Higher administrative fee rates differ from blended administrative fee rates in how they are calculated. Requests for higher administrative rates must clearly demonstrate that the PHA's published rate cannot cover their projected expenses. Next, a breakeven rate is calculated to ensure the PHA receives sufficient funds to cover their expenses while also ensuring the administrative fee reserves do not grow.

This notice identifies the monthly per-voucher-unit fee rates to be used to determine PHA administrative fee eligibility. The current fee rates remain accessible through the following link: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidance_and_notices,* under the Notices and Guidance for PHAs section.

Direct questions to the PHA's assigned representative at the Financial Management Center or the Financial Management Division at *PIHFinancialManagementDivision@hud.gov*.

C. Moving To Work (MTW) Agencies

In cases where an MTW Agency has an alternative formula for determining HCV Administrative Fees in Attachment A of their MTW Agreements, HUD calculates the HCV Administrative Fees in accordance with that MTW Agreement provision.

Dominique Blom,

General Deputy Assistant Secretary Public and Indian Housing.

PHA No.	A Rate	B Rate
AK901	$120.31	$112.30
AL001	81.89	76.43
AL002	83.18	77.65
AL004	80.81	75.43
AL005	87.13	81.33
AL006	80.81	75.43
AL007	80.81	75.43
AL008	80.01	74.67
AL011	80.01	74.67
AL012	81.08	75.67
AL014	80.01	74.67
AL047	83.21	77.67
AL048	80.81	75.43
AL049	80.81	75.43
AL050	80.81	75.43
AL052	80.01	74.67
AL053	80.01	74.67
AL054	80.81	75.43
AL060	80.01	74.67
AL061	80.81	75.43
AL063	81.89	76.43
AL068	80.81	75.43
AL069	81.89	76.43
AL072	81.89	76.43
AL073	80.21	74.85
AL075	80.01	74.67
AL077	80.81	75.43
AL086	81.89	76.43
AL090	80.01	74.67
AL091	80.01	74.67
AL099	80.01	74.67
AL105	80.01	74.67
AL107	80.01	74.67
AL112	80.01	74.67
AL114	80.01	74.67
AL115	80.01	74.67
AL116	80.01	74.67
AL118	80.01	74.67
AL121	80.01	74.67
AL124	80.21	74.85
AL125	81.89	76.43
AL129	81.08	75.67
AL131	80.81	75.43
AL138	80.81	75.43
AL139	80.81	75.43
AL152	80.81	75.43
AL154	80.01	74.67
AL155	80.01	74.67
AL160	80.01	74.67
AL165	84.39	78.77
AL169	83.18	77.65
AL171	80.01	74.67
AL172	80.81	75.43
AL174	80.01	74.67
AL177	80.01	74.67
AL181	80.01	74.67
AL192	80.01	74.67
AL202	83.18	77.65
AR002	82.74	77.24
AR003	78.72	73.47
AR004	82.74	77.24
AR006	82.74	77.24
AR010	74.65	69.68
AR012	74.65	69.68
AR015	77.37	72.21
AR016	74.65	69.68
AR017	75.84	70.79
AR020	74.65	69.68
AR024	80.99	75.59
AR031	75.84	70.79
AR033	74.65	69.68
AR034	75.84	70.79
AR035	74.65	69.68
AR037	74.65	69.68
AR039	74.65	69.68
AR041	82.74	77.24
AR042	75.84	70.79
AR045	74.65	69.68
AR052	74.65	69.68
AR066	74.65	69.68
AR068	74.65	69.68
AR082	74.65	69.68
AR104	75.84	70.79
AR117	74.65	69.68
AR121	74.65	69.68
AR131	75.84	70.79
AR152	74.65	69.68
AR161	74.65	69.68
AR163	75.84	70.79
AR166	74.65	69.68
AR170	82.74	77.24
AR175	82.74	77.24
AR176	74.65	69.68
AR177	74.65	69.68
AR181	75.84	70.79
AR194	78.72	73.47
AR197	74.65	69.68
AR200	74.65	69.68
AR210	74.65	69.68
AR211	74.65	69.68
AR213	74.65	69.68
AR214	74.65	69.68
AR215	74.65	69.68
AR223	74.65	69.68
AR224	74.65	69.68
AR225	74.65	69.68
AR232	75.84	70.79
AR240	74.65	69.68
AR241	76.27	71.18
AR247	74.65	69.68
AR252	82.74	77.24
AR257	74.65	69.68
AR264	80.99	75.59
AR265	74.65	69.68
AR266	74.65	69.68
AZ001	91.49	85.38
AZ003	91.49	85.38
AZ004	90.45	84.41
AZ005	91.49	85.38
AZ006	100.03	93.37
AZ008	70.29	65.61
AZ009	91.49	85.38
AZ010	91.49	85.38
AZ013	101.65	94.87
AZ023	74.07	69.13
AZ025	90.45	84.41
AZ028	91.49	85.38
AZ031	91.49	85.38
AZ032	91.49	85.38
AZ033	90.45	84.41
AZ034	75.17	70.16
AZ035	101.65	94.87
AZ041	100.03	93.37
AZ043	122.50	114.34
AZ045	72.84	67.98
AZ880	91.49	85.38
AZ901	100.03	93.37
CA001	154.28	144.00
CA002	154.28	144.00
CA003	154.28	144.00
CA004	154.28	144.00
CA005	117.17	109.35
CA006	107.50	100.32
CA007	117.17	109.35
CA008	117.57	109.73
CA011	154.28	144.00
CA014	154.28	144.00
CA019	123.08	114.88
CA021	150.65	140.58
CA022	123.08	114.88
CA023	101.01	94.29
CA024	112.42	104.94
CA026	113.21	105.65
CA027	123.08	114.88
CA028	107.50	100.32
CA030	100.25	93.58
CA031	154.28	144.00
CA032	154.28	144.00
CA033	132.92	124.04
CA035	154.28	144.00
CA039	111.86	104.41
CA041	133.93	125.00
CA043	103.32	96.42
CA044	117.17	109.35
CA048	88.65	82.74
CA052	154.28	144.00
CA053	97.02	90.56
CA055	133.93	125.00
CA056	154.28	144.00
CA058	154.28	144.00
CA059	154.28	144.00

PHA No.	A Rate	B Rate
CA060	154.28	144.00
CA061	105.52	98.49
CA062	154.28	144.00
CA063	137.94	128.73
CA064	133.55	124.65
CA065	133.93	125.00
CA066	133.93	125.00
CA067	154.28	144.00
CA068	154.28	144.00
CA069	107.50	100.32
CA070	96.57	90.14
CA071	154.28	144.00
CA072	154.28	144.00
CA073	133.93	125.00
CA074	154.28	144.00
CA075	154.28	144.00
CA076	150.65	140.58
CA077	137.94	128.73
CA079	154.28	144.00
CA082	154.28	144.00
CA084	113.73	106.14
CA085	150.47	140.45
CA086	108.71	101.45
CA088	150.47	140.45
CA092	154.28	144.00
CA093	154.28	144.00
CA094	154.28	144.00
CA096	107.50	100.32
CA102	154.28	144.00
CA103	154.28	144.00
CA104	154.28	144.00
CA105	154.28	144.00
CA106	107.50	100.32
CA108	137.94	128.73
CA110	154.28	144.00
CA111	154.28	144.00
CA114	154.28	144.00
CA116	137.94	128.73
CA117	154.28	144.00
CA118	154.28	144.00
CA119	154.28	144.00
CA120	154.28	144.00
CA121	154.28	144.00
CA123	154.28	144.00
CA125	133.93	125.00
CA126	154.28	144.00
CA128	117.17	109.35
CA131	133.93	125.00
CA132	137.94	128.73
CA136	154.28	144.00
CA143	111.86	104.41
CA144	105.52	98.49
CA149	117.17	109.35
CA151	117.17	109.35
CA155	137.94	128.73
CO001	94.39	88.10
CO002	87.19	81.37
CO005	99.36	92.74
CO006	85.05	79.38
CO016	107.11	99.96
CO019	94.39	88.10
CO024	85.05	79.38
CO028	88.06	82.19
CO031	85.05	79.38
CO034	101.50	94.74
CO035	87.52	81.70
CO036	94.39	88.10
CO040	131.34	122.60
CO041	101.50	94.74
CO043	99.36	92.74
CO045	85.05	79.38
CO048	94.39	88.10
CO049	94.39	88.10
CO050	94.39	88.10
CO051	110.42	103.06
CO052	94.39	88.10
CO057	94.39	88.10
CO058	94.39	88.10
CO061	107.11	99.96
CO070	107.11	99.96
CO071	88.06	82.19
CO072	94.39	88.10
CO079	99.36	92.74
CO087	131.34	122.60
CO090	87.52	81.70
CO095	125.59	117.22
CO101	85.05	79.38
CO103	101.50	94.74
CO888	87.19	81.37
CO911	94.39	88.10
CO921	94.39	88.10
CT001	116.05	108.32
CT002	124.40	116.11
CT003	109.39	102.08
CT004	120.57	112.54
CT005	109.39	102.08
CT006	98.80	92.21
CT007	124.40	116.11
CT008	109.39	102.08
CT009	109.39	102.08
CT010	98.80	92.21
CT011	120.57	112.54
CT013	109.39	102.08
CT015	116.05	108.32
CT017	116.05	108.32
CT018	107.38	100.22
CT019	124.40	116.11
CT020	124.40	116.11
CT023	109.39	102.08
CT024	98.80	92.21
CT026	109.39	102.08
CT027	116.05	108.32
CT028	109.39	102.08
CT029	120.57	112.54
CT030	116.05	108.32
CT031	94.85	88.53
CT032	109.39	102.08
CT033	109.39	102.08
CT036	109.39	102.08
CT038	109.39	102.08
CT039	109.39	102.08
CT040	109.39	102.08
CT041	109.39	102.08
CT042	120.57	112.54
CT047	98.80	92.21
CT048	109.39	102.08
CT049	109.39	102.08
CT051	109.39	102.08
CT052	116.05	108.32
CT053	109.39	102.08
CT058	98.80	92.21
CT061	98.80	92.21
CT063	120.57	112.54
CT067	120.57	112.54
CT068	109.39	102.08
CT901	109.39	102.08
DC001	139.43	130.14
DC880	139.43	130.14
DE001	108.11	100.91
DE002	101.14	94.40
DE003	108.11	100.91
DE005	108.11	100.91
DE901	101.14	94.40
FL001	90.96	84.90
FL002	96.03	89.62
FL003	96.03	89.62
FL004	100.30	93.60
FL005	130.31	121.63
FL007	96.26	89.85
FL008	105.39	98.36
FL009	101.76	94.97
FL010	122.01	113.88
FL011	79.93	74.60
FL013	127.44	118.96
FL015	85.47	79.76
FL017	130.31	121.63
FL018	78.08	72.87
FL019	92.59	86.43
FL020	92.59	86.43
FL021	101.76	94.97
FL022	96.26	89.85
FL023	105.39	98.36
FL024	96.26	89.85
FL025	92.59	86.43
FL026	79.93	74.60
FL028	122.01	113.88
FL030	96.26	89.85
FL031	74.12	69.18
FL032	78.70	73.44
FL033	100.30	93.60
FL034	96.03	89.62
FL035	78.08	72.87
FL037	90.96	84.90
FL041	102.30	95.49
FL045	102.30	95.49
FL046	78.08	72.87
FL047	100.96	94.24
FL049	75.89	70.84
FL053	78.70	73.44
FL057	74.12	69.18
FL060	98.32	91.76
FL062	96.03	89.62
FL063	86.29	80.54
FL066	130.31	121.63
FL068	130.31	121.63
FL069	78.08	72.87
FL070	86.29	80.54
FL071	79.93	74.60
FL072	96.26	89.85
FL073	85.47	79.76
FL075	96.03	89.62
FL079	122.01	113.88
FL080	101.76	94.97
FL081	122.01	113.88
FL083	101.76	94.97
FL092	78.70	73.44
FL093	100.30	93.60
FL102	78.08	72.87
FL104	96.03	89.62
FL105	105.39	98.36
FL106	100.30	93.60
FL110	78.08	72.87
FL113	96.26	89.85
FL116	122.01	113.88
FL119	101.76	94.97
FL123	93.52	87.28
FL128	100.96	94.24
FL132	101.92	95.16
FL136	122.01	113.88
FL137	96.03	89.62
FL139	79.93	74.60
FL141	105.06	98.06
FL144	127.44	118.96
FL145	130.31	121.63
FL147	78.08	72.87
FL201	100.30	93.60
FL202	74.12	69.18
FL881	130.31	121.63
FL888	96.03	89.62
GA001	87.13	81.33
GA002	87.13	81.33
GA004	87.13	81.33

PHA No.	A Rate	B Rate
GA006	106.23	99.14
GA007	87.13	81.33
GA009	87.13	81.33
GA010	106.23	99.14
GA011	106.23	99.14
GA023	87.13	81.33
GA062	82.00	76.54
GA078	106.23	99.14
GA095	106.23	99.14
GA116	106.23	99.14
GA188	106.23	99.14
GA228	106.23	99.14
GA232	106.23	99.14
GA237	106.23	99.14
GA264	106.23	99.14
GA285	87.13	81.33
GA901	106.23	99.14
GQ901	140.70	131.33
HI002	129.47	120.84
HI003	144.71	135.07
HI004	144.72	135.09
HI005	145.82	136.11
HI901	144.71	135.07
IA002	78.20	72.98
IA004	82.22	76.73
IA015	78.20	72.98
IA018	83.17	77.63
IA020	93.05	86.86
IA022	94.84	88.53
IA023	82.76	77.25
IA024	90.08	84.08
IA030	78.20	72.98
IA038	90.44	84.41
IA042	78.20	72.98
IA045	88.53	82.63
IA047	78.20	72.98
IA049	78.20	72.98
IA050	90.44	84.41
IA057	78.20	72.98
IA084	78.20	72.98
IA087	83.37	77.81
IA098	82.39	76.90
IA100	78.20	72.98
IA107	78.20	72.98
IA108	78.20	72.98
IA113	90.44	84.41
IA114	78.20	72.98
IA117	82.76	77.25
IA119	78.20	72.98
IA120	93.05	86.86
IA122	78.20	72.98
IA124	78.20	72.98
IA125	78.20	72.98
IA126	88.53	82.63
IA127	78.20	72.98
IA128	78.20	72.98
IA129	78.20	72.98
IA130	78.20	72.98
IA131	93.05	86.86
IA132	90.44	84.41
ID005	85.22	79.54
ID013	105.90	98.84
ID016	105.90	98.84
ID021	105.90	98.84
ID901	88.22	82.32
IL002	117.21	109.39
IL003	92.55	86.38
IL004	84.35	78.71
IL006	82.60	77.10
IL009	88.53	82.63
IL010	88.53	82.63
IL011	74.96	69.96
IL012	79.81	74.49
IL014	87.81	81.96
IL015	79.18	73.89
IL016	73.41	68.51
IL018	88.53	82.63
IL020	88.53	82.63
IL022	84.17	78.56
IL024	117.21	109.39
IL025	117.21	109.39
IL026	117.21	109.39
IL028	73.41	68.51
IL030	79.18	73.89
IL032	87.81	81.96
IL035	87.81	81.96
IL037	73.41	68.51
IL038	73.41	68.51
IL039	79.97	74.65
IL040	73.41	68.51
IL043	73.41	68.51
IL050	74.96	69.96
IL051	82.31	76.84
IL052	73.41	68.51
IL053	74.96	69.96
IL056	117.21	109.39
IL057	73.41	68.51
IL059	73.41	68.51
IL061	74.27	69.31
IL074	79.18	73.89
IL076	73.41	68.51
IL079	73.41	68.51
IL082	73.41	68.51
IL083	84.17	78.56
IL084	79.45	74.16
IL085	74.94	69.95
IL086	77.86	72.67
IL087	74.96	69.96
IL088	73.41	68.51
IL089	92.89	86.70
IL090	117.21	109.39
IL091	73.41	68.51
IL092	117.21	109.39
IL095	86.10	80.36
IL096	73.41	68.51
IL101	117.21	109.39
IL103	117.21	109.39
IL104	92.55	86.38
IL107	117.21	109.39
IL116	117.21	109.39
IL117	82.31	76.84
IL120	73.41	68.51
IL122	84.17	78.56
IL123	73.41	68.51
IL124	92.55	86.38
IL126	74.96	69.96
IL130	117.21	109.39
IL131	88.53	82.63
IL136	117.21	109.39
IL137	118.22	110.33
IL901	117.21	109.39
IN002	64.12	59.84
IN003	71.97	67.19
IN004	67.04	62.57
IN005	67.04	62.57
IN006	79.57	74.27
IN007	70.01	65.35
IN009	64.12	59.84
IN010	87.87	82.02
IN011	87.87	82.02
IN012	73.18	68.30
IN015	70.84	66.12
IN016	69.56	64.93
IN017	79.57	74.27
IN018	64.12	59.84
IN019	69.40	64.77
IN020	70.84	66.12
IN021	67.04	62.57
IN022	71.32	66.58
IN023	73.18	68.30
IN025	73.18	68.30
IN026	69.55	64.91
IN029	87.87	82.02
IN031	64.12	59.84
IN032	65.27	60.92
IN035	67.04	62.57
IN037	69.56	64.93
IN041	64.12	59.84
IN047	64.12	59.84
IN048	65.16	60.82
IN050	64.12	59.84
IN055	65.27	60.92
IN056	67.11	62.64
IN058	72.62	67.79
IN060	64.12	59.84
IN062	68.83	64.26
IN067	64.12	59.84
IN071	76.86	71.72
IN078	67.11	62.64
IN079	79.57	74.27
IN080	79.57	74.27
IN086	64.12	59.84
IN091	64.12	59.84
IN092	64.12	59.84
IN100	70.84	66.12
IN901	79.57	74.27
KS001	76.98	71.84
KS002	73.52	68.63
KS004	79.21	73.92
KS006	69.34	64.72
KS017	69.34	64.72
KS038	69.34	64.72
KS041	69.34	64.72
KS043	76.98	71.84
KS053	81.25	75.83
KS062	69.34	64.72
KS063	69.80	65.15
KS068	76.98	71.84
KS073	79.21	73.92
KS091	69.34	64.72
KS149	69.34	64.72
KS159	69.34	64.72
KS161	69.34	64.72
KS162	76.98	71.84
KS165	69.34	64.72
KS166	69.34	64.72
KS167	69.80	65.15
KS168	73.52	68.63
KS170	69.34	64.72
KY001	73.18	68.30
KY003	64.64	60.33
KY004	81.05	75.65
KY007	63.46	59.23
KY008	63.46	59.23
KY009	73.18	68.30
KY011	82.04	76.57
KY012	69.56	64.93
KY015	84.07	78.45
KY017	63.46	59.23
KY021	63.46	59.23
KY022	63.46	59.23
KY026	63.46	59.23
KY027	63.46	59.23
KY035	63.46	59.23
KY040	63.46	59.23
KY047	63.46	59.23
KY053	63.46	57.96
KY056	63.46	59.23
KY061	81.05	75.65
KY071	70.54	65.84
KY086	63.46	59.23
KY107	63.46	59.23

PHA No.	A Rate	B Rate
KY121	63.46	59.23
KY132	70.28	65.59
KY133	84.07	78.45
KY135	84.07	78.45
KY136	84.07	78.45
KY137	63.46	59.23
KY138	63.46	59.23
KY140	81.05	75.65
KY141	63.46	59.23
KY142	72.27	67.46
KY157	63.46	59.23
KY160	63.46	59.23
KY161	72.27	67.46
KY163	63.46	59.23
KY169	63.46	59.23
KY171	73.18	68.30
KY901	81.05	75.65
LA001	85.73	80.00
LA002	83.92	78.33
LA003	92.56	86.39
LA004	81.85	76.39
LA005	81.85	76.39
LA006	81.85	76.39
LA009	92.56	86.39
LA012	85.73	80.00
LA023	81.85	76.39
LA024	81.85	76.39
LA029	81.85	76.39
LA031	81.85	76.39
LA032	81.85	76.39
LA033	81.85	76.39
LA036	81.85	76.39
LA037	88.09	82.23
LA046	81.85	76.39
LA057	81.85	76.39
LA063	81.85	76.39
LA067	81.85	76.39
LA074	81.85	76.39
LA086	81.85	76.39
LA094	85.73	80.00
LA097	81.85	76.39
LA101	92.56	86.39
LA103	85.73	80.00
LA104	81.85	76.39
LA111	81.85	76.39
LA114	81.85	76.39
LA115	81.85	76.39
LA120	81.85	76.39
LA122	81.85	76.39
LA125	81.85	76.39
LA128	81.85	76.39
LA129	81.85	76.39
LA132	81.85	76.39
LA159	81.85	76.39
LA163	81.85	76.39
LA165	81.85	76.39
LA166	81.85	76.39
LA169	81.85	76.39
LA171	81.85	76.39
LA172	81.85	76.39
LA173	81.85	76.39
LA174	81.85	76.39
LA178	81.85	76.39
LA181	85.73	80.00
LA182	81.85	76.39
LA184	83.92	78.33
LA186	81.85	76.39
LA187	85.73	80.00
LA188	81.85	76.39
LA189	81.85	76.39
LA190	83.92	78.33
LA192	81.85	76.39
LA194	82.08	76.62
LA195	81.85	76.39
LA196	81.85	76.39
LA199	92.56	86.39
LA202	92.56	86.39
LA204	92.56	86.39
LA205	92.56	86.39
LA206	81.85	76.39
LA207	81.85	76.39
LA211	82.08	76.62
LA212	81.85	76.39
LA213	88.09	82.23
LA214	81.85	76.39
LA215	81.85	76.39
LA220	81.85	76.39
LA222	81.85	76.39
LA229	81.85	76.39
LA230	83.92	78.33
LA232	81.85	76.39
LA233	81.85	76.39
LA238	85.73	80.00
LA241	81.85	76.39
LA242	81.85	76.39
LA246	81.85	76.39
LA247	81.85	76.39
LA248	81.85	76.39
LA253	82.08	76.62
LA257	81.85	76.39
LA258	81.85	76.39
LA266	81.85	76.39
LA270	85.73	80.00
LA888	83.92	78.33
LA889	85.73	80.00
LA903	85.73	80.00
MA001	141.00	131.61
MA002	152.40	142.23
MA003	152.40	142.23
MA005	141.00	131.61
MA006	140.42	131.07
MA007	141.00	131.61
MA008	141.00	131.61
MA010	141.00	131.61
MA012	141.00	131.61
MA013	152.40	142.23
MA014	152.40	142.23
MA015	152.40	142.23
MA016	152.40	142.23
MA017	152.40	142.23
MA018	140.42	131.07
MA019	152.40	142.23
MA020	152.40	142.23
MA022	152.40	142.23
MA023	152.40	142.23
MA024	141.00	131.61
MA025	152.40	142.23
MA026	141.00	131.61
MA027	152.40	142.23
MA028	152.40	142.23
MA029	141.00	131.61
MA031	152.40	142.23
MA032	152.40	142.23
MA033	152.40	142.23
MA034	141.00	131.61
MA035	141.00	131.61
MA036	152.40	142.23
MA037	141.00	131.61
MA039	141.00	131.61
MA040	152.40	142.23
MA041	141.00	131.61
MA042	152.40	142.23
MA043	141.00	131.61
MA044	152.40	142.23
MA045	152.40	142.23
MA046	152.75	142.58
MA047	152.75	142.58
MA048	152.40	142.23
MA050	141.00	131.61
MA051	141.00	131.61
MA053	152.40	142.23
MA054	152.40	142.23
MA055	152.40	142.23
MA056	152.40	142.23
MA057	152.40	142.23
MA059	152.40	142.23
MA060	141.00	131.61
MA061	152.40	142.23
MA063	152.40	142.23
MA065	152.40	142.23
MA066	141.00	131.61
MA067	152.40	142.23
MA069	152.40	142.23
MA070	152.40	142.23
MA072	152.40	142.23
MA073	152.40	142.23
MA074	152.40	142.23
MA075	152.40	142.23
MA076	141.00	131.61
MA077	141.00	131.61
MA078	141.00	131.61
MA079	152.40	142.23
MA080	141.00	131.61
MA081	141.00	131.61
MA082	141.00	131.61
MA084	141.00	131.61
MA085	141.00	131.61
MA086	141.00	131.61
MA087	141.00	131.61
MA088	141.00	131.61
MA089	152.40	142.23
MA091	152.40	142.23
MA092	152.40	142.23
MA093	152.40	142.23
MA094	140.42	131.07
MA095	152.75	142.58
MA096	140.42	131.07
MA098	152.40	142.23
MA099	152.40	142.23
MA100	141.00	131.61
MA101	152.40	142.23
MA105	141.00	131.61
MA106	141.00	131.61
MA107	141.00	131.61
MA108	141.00	131.61
MA109	152.40	142.23
MA110	152.75	142.58
MA111	152.40	142.23
MA112	152.40	142.23
MA116	152.40	142.23
MA117	152.40	142.23
MA118	152.40	142.23
MA119	152.40	142.23
MA121	152.40	142.23
MA122	152.40	142.23
MA123	141.00	131.61
MA125	152.40	142.23
MA127	141.00	131.61
MA133	152.40	142.23
MA134	152.40	142.23
MA135	152.40	142.23
MA138	152.75	142.58
MA139	141.00	131.61
MA140	152.40	142.23
MA147	152.40	142.23
MA154	152.40	142.23
MA155	152.40	142.23
MA165	152.40	142.23
MA170	152.40	142.23
MA172	141.00	131.61
MA174	152.40	142.23
MA181	152.75	142.58

PHA No.	A Rate	B Rate
MA188	141.00	131.61
MA880	152.40	142.23
MA881	152.40	142.23
MA882	141.00	131.61
MA883	152.40	142.23
MA901	152.40	142.23
MD001	102.50	95.66
MD002	102.50	95.66
MD003	139.43	130.14
MD004	139.43	130.14
MD006	80.41	75.04
MD007	139.43	130.14
MD014	92.12	85.98
MD015	139.43	130.14
MD018	102.50	95.66
MD019	93.51	87.26
MD021	116.27	108.52
MD022	139.43	130.14
MD023	102.50	95.66
MD024	139.43	130.14
MD025	102.50	95.66
MD027	102.50	95.66
MD028	80.41	75.04
MD029	108.11	100.91
MD032	102.50	95.66
MD033	102.50	95.66
MD034	102.50	95.66
MD901	139.43	130.14
ME001	80.08	74.74
ME002	80.08	74.74
ME003	125.29	116.94
ME004	80.08	74.74
ME005	89.66	83.67
ME006	95.80	89.40
ME007	89.66	83.67
ME008	84.20	78.57
ME009	91.00	84.95
ME011	110.22	102.87
ME015	125.29	116.94
ME018	91.00	84.95
ME019	100.42	93.70
ME020	125.29	116.94
ME021	91.00	84.95
ME025	80.08	74.74
ME027	82.21	76.74
ME028	110.22	102.87
ME030	84.20	78.57
ME901	125.29	116.94
MI001	78.48	73.25
MI005	78.48	73.25
MI006	67.11	62.63
MI008	78.48	73.25
MI009	67.55	63.04
MI010	68.41	63.85
MI019	65.75	61.37
MI020	65.75	61.37
MI027	78.48	73.25
MI030	65.75	61.37
MI031	74.08	69.14
MI032	68.41	63.85
MI035	70.73	66.02
MI036	65.75	61.37
MI037	78.48	73.25
MI038	67.82	63.31
MI039	78.48	73.25
MI040	78.48	73.25
MI044	78.48	73.25
MI045	78.48	73.25
MI047	65.75	61.37
MI048	78.48	73.25
MI049	65.75	61.37
MI050	65.75	61.37
MI051	78.48	73.25
MI052	78.48	73.25
MI055	78.48	73.25
MI058	75.24	70.23
MI059	78.48	73.25
MI060	70.52	65.81
MI061	70.97	66.24
MI063	65.75	61.37
MI064	93.51	87.27
MI066	74.08	69.14
MI070	70.52	65.81
MI073	74.08	69.14
MI074	70.97	66.24
MI080	72.98	68.13
MI084	70.52	65.81
MI087	70.52	65.81
MI089	78.48	73.25
MI093	74.08	69.14
MI094	65.75	61.37
MI096	78.48	73.25
MI097	78.48	73.25
MI100	78.48	73.25
MI112	65.75	61.37
MI115	74.08	69.14
MI117	65.94	61.54
MI119	65.75	61.37
MI120	68.41	63.85
MI121	70.97	66.24
MI132	65.75	61.37
MI139	78.48	73.25
MI157	78.48	73.25
MI167	75.24	70.23
MI168	75.24	70.23
MI186	65.94	61.54
MI194	75.24	70.23
MI198	74.08	69.14
MI880	75.24	70.23
MI901	78.48	73.25
MN001	109.06	101.79
MN002	109.06	101.79
MN003	80.67	75.29
MN007	80.67	75.29
MN008	74.97	69.97
MN009	74.97	69.97
MN018	74.97	69.97
MN021	88.65	82.74
MN032	74.97	69.97
MN034	74.97	69.97
MN037	77.42	72.26
MN038	83.09	77.55
MN049	74.97	69.97
MN063	81.01	75.61
MN073	80.67	75.29
MN077	81.79	76.35
MN085	74.97	69.97
MN090	74.97	69.97
MN101	109.06	101.79
MN107	74.97	69.97
MN128	74.97	69.97
MN144	109.06	101.79
MN147	109.06	101.79
MN151	90.29	84.29
MN152	109.06	101.79
MN153	74.97	69.97
MN154	74.97	69.97
MN158	88.65	82.74
MN161	78.66	73.40
MN163	109.06	101.79
MN164	88.65	82.74
MN166	74.97	69.97
MN167	81.01	75.61
MN168	78.66	73.40
MN169	74.97	69.97
MN170	109.06	101.79
MN171	76.79	71.66
MN172	83.09	77.55
MN173	74.97	69.97
MN174	74.97	69.97
MN176	74.97	69.97
MN177	74.97	69.97
MN178	78.66	73.40
MN179	74.97	69.97
MN180	74.97	69.97
MN182	74.97	69.97
MN184	109.06	101.79
MN188	74.97	69.97
MN190	74.97	69.97
MN191	74.97	69.97
MN192	74.97	69.97
MN193	84.24	78.64
MN197	76.02	70.95
MN200	74.97	69.97
MN203	78.66	73.40
MN212	109.06	101.79
MN216	109.06	101.79
MN219	81.01	75.61
MN220	81.79	76.35
MN801	109.06	101.79
MN802	109.06	101.79
MO001	79.18	73.89
MO002	76.98	71.84
MO003	76.54	71.44
MO004	79.18	73.89
MO006	79.18	73.89
MO007	76.54	71.44
MO008	76.54	71.44
MO009	76.54	71.44
MO010	76.54	71.44
MO014	76.54	71.44
MO016	76.54	71.44
MO017	76.98	71.84
MO030	76.98	71.84
MO037	76.54	71.44
MO040	76.54	71.44
MO053	76.98	71.84
MO058	76.54	71.44
MO064	76.54	71.44
MO065	76.54	71.44
MO072	76.54	71.44
MO074	76.54	71.44
MO107	76.54	71.44
MO129	76.54	71.44
MO133	76.54	71.44
MO145	76.54	71.44
MO149	76.54	71.44
MO188	76.54	71.44
MO190	76.54	71.44
MO193	76.98	71.84
MO196	76.98	71.84
MO197	76.98	71.84
MO198	76.54	71.44
MO199	79.18	73.89
MO200	76.54	71.44
MO203	76.54	71.44
MO204	76.98	71.84
MO205	79.18	73.89
MO206	76.54	71.44
MO207	76.54	71.44
MO209	76.54	71.44
MO210	76.98	71.84
MO212	76.54	71.44
MO213	76.98	71.84
MO215	76.54	71.44
MO216	76.54	71.44
MO217	76.54	71.44
MO227	79.18	73.89
MS004	74.53	69.56
MS005	79.99	74.66
MS006	74.53	69.56
MS016	80.99	75.59

PHA No.	A Rate	B Rate
MS019	74.53	69.56
MS030	74.53	69.56
MS040	79.99	74.66
MS057	74.53	69.56
MS058	94.40	88.09
MS095	74.53	69.56
MS103	94.40	88.09
MS107	74.53	69.56
MS128	74.53	69.56
MS301	79.99	74.66
MT001	102.50	95.67
MT002	90.75	84.71
MT003	87.75	81.89
MT004	102.03	95.22
MT006	82.66	77.16
MT015	89.56	83.57
MT033	92.27	86.10
MT036	89.56	83.57
MT901	90.75	84.71
NC001	83.24	77.69
NC002	99.45	92.81
NC003	91.20	85.11
NC004	80.03	74.69
NC006	86.14	80.41
NC007	83.24	77.69
NC008	91.20	85.11
NC009	84.61	78.96
NC011	86.14	80.41
NC012	86.14	80.41
NC013	99.45	92.81
NC014	80.03	74.69
NC015	83.24	77.69
NC018	80.03	74.69
NC019	83.24	77.69
NC020	80.03	74.69
NC021	99.45	92.81
NC022	83.24	77.69
NC025	80.03	74.69
NC032	80.03	74.69
NC035	80.78	75.39
NC039	81.95	76.49
NC050	82.89	77.36
NC056	87.70	81.87
NC057	91.20	85.11
NC059	86.14	80.41
NC065	91.20	85.11
NC070	86.76	80.96
NC071	81.95	76.49
NC072	86.39	80.64
NC075	80.03	74.69
NC077	80.03	74.69
NC081	86.14	80.41
NC087	83.24	77.69
NC089	80.03	74.69
NC098	83.24	77.69
NC102	86.76	80.96
NC104	99.45	92.81
NC118	80.03	74.69
NC120	99.45	92.81
NC134	86.76	80.96
NC137	83.24	77.69
NC138	80.03	74.69
NC139	80.03	74.69
NC140	83.24	77.69
NC141	80.03	74.69
NC144	83.24	77.69
NC145	80.03	74.69
NC146	80.03	74.69
NC147	83.24	77.69
NC149	80.03	74.69
NC150	80.03	74.69
NC151	80.11	74.77
NC152	83.24	77.69
NC155	80.03	74.69
NC159	87.70	81.87
NC160	80.03	74.69
NC161	80.03	74.69
NC163	84.13	78.52
NC164	99.45	92.81
NC165	80.03	74.69
NC166	86.14	80.41
NC167	81.52	76.09
NC173	83.24	77.69
NC175	83.24	77.69
NC901	80.03	74.69
ND001	88.65	82.74
ND002	88.65	82.74
ND003	88.65	82.74
ND009	88.65	82.74
ND010	88.65	82.74
ND011	88.65	82.74
ND012	88.65	82.74
ND013	88.65	82.74
ND014	88.65	82.74
ND015	88.65	82.74
ND016	88.65	82.74
ND017	88.65	82.74
ND019	88.65	82.74
ND021	88.65	82.74
ND022	88.65	82.74
ND025	88.65	82.74
ND026	88.65	82.74
ND030	88.65	82.74
ND031	88.65	82.74
ND035	88.65	82.74
ND036	88.65	82.74
ND037	88.65	82.74
ND038	88.65	82.74
ND039	88.65	82.74
ND044	88.65	82.74
ND049	88.65	82.74
ND052	88.65	82.74
ND054	88.65	82.74
ND055	88.65	82.74
ND070	88.65	82.74
ND901	88.65	82.74
NE001	82.76	77.25
NE002	82.76	77.25
NE003	82.76	77.25
NE004	82.25	76.77
NE010	82.25	76.77
NE041	82.25	76.77
NE078	82.25	76.77
NE083	82.25	76.77
NE094	82.25	76.77
NE100	82.25	76.77
NE104	82.25	76.77
NE114	82.25	76.77
NE120	82.25	76.77
NE123	82.25	76.77
NE141	82.25	76.77
NE150	82.25	76.77
NE153	82.76	77.25
NE157	82.25	76.77
NE174	82.76	77.25
NE175	83.17	77.63
NE179	82.25	76.77
NE181	82.25	76.77
NE182	82.76	77.25
NH001	109.63	102.31
NH002	116.47	108.70
NH003	113.52	105.96
NH004	113.52	105.96
NH005	125.05	116.71
NH006	113.52	105.96
NH007	98.50	91.93
NH008	113.52	105.96
NH009	101.68	94.89
NH010	116.86	109.07
NH011	89.64	83.67
NH012	95.49	89.13
NH013	113.52	105.96
NH014	113.52	105.96
NH015	89.64	83.67
NH016	89.64	83.67
NH022	141.00	131.61
NH888	116.47	108.70
NH901	109.63	102.31
NJ002	126.77	118.30
NJ003	126.77	118.30
NJ004	108.20	100.99
NJ006	129.82	121.18
NJ007	127.09	118.62
NJ008	127.09	118.62
NJ009	108.20	100.99
NJ010	108.11	100.91
NJ011	129.82	121.18
NJ012	108.20	100.99
NJ013	129.82	121.18
NJ014	107.20	100.07
NJ015	108.20	100.99
NJ021	129.82	121.18
NJ022	129.82	121.18
NJ023	126.77	118.30
NJ025	126.77	118.30
NJ026	108.20	100.99
NJ030	108.20	100.99
NJ032	126.77	118.30
NJ033	129.82	121.18
NJ035	129.82	121.18
NJ036	108.20	100.99
NJ037	126.77	118.30
NJ039	126.77	118.30
NJ042	129.82	121.18
NJ043	129.82	121.18
NJ044	129.82	121.18
NJ046	127.09	118.62
NJ047	129.82	121.18
NJ048	127.09	118.62
NJ049	103.06	96.18
NJ050	126.77	118.30
NJ051	108.11	100.91
NJ052	126.77	118.30
NJ054	127.09	118.62
NJ055	129.82	121.18
NJ056	127.09	118.62
NJ058	108.11	100.91
NJ059	107.20	100.07
NJ060	127.09	118.62
NJ061	103.06	96.18
NJ063	103.06	96.18
NJ065	127.09	118.62
NJ066	126.77	118.30
NJ067	129.82	121.18
NJ068	126.77	118.30
NJ070	129.82	121.18
NJ071	129.82	121.18
NJ073	108.11	100.91
NJ074	108.11	100.91
NJ075	129.82	121.18
NJ077	108.20	100.99
NJ081	127.09	118.62
NJ083	108.20	100.99
NJ084	129.82	121.18
NJ086	126.77	118.30
NJ088	126.77	118.30
NJ089	129.82	121.18
NJ090	129.82	121.18
NJ092	126.77	118.30
NJ095	127.09	118.62
NJ097	129.82	121.18
NJ099	126.77	118.30

PHA No.	A Rate	B Rate
NJ102	126.77	118.30
NJ105	126.77	118.30
NJ106	129.82	121.18
NJ108	126.77	118.30
NJ109	126.77	118.30
NJ110	129.82	121.18
NJ112	129.82	121.18
NJ113	126.77	118.30
NJ114	129.82	121.18
NJ118	108.11	100.91
NJ204	108.11	100.91
NJ212	124.55	116.25
NJ214	127.09	118.62
NJ880	127.09	118.62
NJ881	129.82	121.18
NJ882	126.77	118.30
NJ912	126.77	118.30
NM001	102.78	95.93
NM002	77.37	72.21
NM003	81.57	76.13
NM006	99.98	93.30
NM009	121.63	113.51
NM020	78.28	73.05
NM039	77.37	72.21
NM050	121.63	113.51
NM057	102.78	95.93
NM061	77.37	72.21
NM063	78.28	73.05
NM066	101.15	94.39
NM067	77.37	72.21
NM077	102.78	95.93
NM088	82.50	77.01
NV001	102.84	95.99
NV018	113.12	105.59
NV905	102.84	95.99
NY001	93.57	87.34
NY002	87.46	81.64
NY003	145.66	135.96
NY005	126.62	118.16
NY006	85.67	79.97
NY009	101.69	94.91
NY012	101.69	94.91
NY015	101.69	94.91
NY016	88.73	82.82
NY017	73.20	68.32
NY018	77.60	72.43
NY019	85.67	79.97
NY020	101.69	94.91
NY021	84.51	78.88
NY022	101.69	94.91
NY023	145.66	135.96
NY025	101.69	94.91
NY027	93.57	87.34
NY028	101.69	94.91
NY033	101.69	94.91
NY034	85.67	79.97
NY035	145.66	135.96
NY038	145.66	135.96
NY041	107.05	99.91
NY042	145.66	135.96
NY044	107.05	99.91
NY045	114.52	106.88
NY048	69.43	64.80
NY049	130.14	121.47
NY050	145.66	135.96
NY051	130.14	121.47
NY054	100.01	93.35
NY057	145.66	135.96
NY059	85.67	79.97
NY060	88.93	83.01
NY061	80.16	74.82
NY062	130.14	121.47
NY065	81.21	75.80
NY066	81.83	76.39
NY067	77.46	72.28
NY068	75.88	70.82
NY070	87.46	81.64
NY071	90.74	84.68
NY077	145.66	135.96
NY079	96.27	89.86
NY084	126.62	118.16
NY085	145.66	135.96
NY086	145.66	135.96
NY087	74.63	69.64
NY088	145.66	135.96
NY089	107.05	99.91
NY091	87.46	81.64
NY094	145.66	135.96
NY098	85.67	79.97
NY102	93.57	87.34
NY103	114.52	106.88
NY107	93.57	87.34
NY109	85.67	79.97
NY110	126.62	118.16
NY113	145.66	135.96
NY114	126.62	118.16
NY121	145.66	135.96
NY123	145.66	135.96
NY125	130.14	121.47
NY127	145.66	135.96
NY128	145.66	135.96
NY130	145.66	135.96
NY132	145.66	135.96
NY134	130.14	121.47
NY137	130.14	121.47
NY138	126.62	118.16
NY141	145.66	135.96
NY146	145.66	135.96
NY148	126.62	118.16
NY149	145.66	135.96
NY152	145.66	135.96
NY154	145.66	135.96
NY158	130.14	121.47
NY159	145.66	135.96
NY160	126.62	118.16
NY165	145.66	135.96
NY402	90.36	84.32
NY403	69.12	64.51
NY404	87.46	81.64
NY405	87.46	81.64
NY406	107.05	99.91
NY408	101.69	94.91
NY409	87.46	81.64
NY413	88.93	83.01
NY416	101.69	94.91
NY417	85.67	79.97
NY421	101.69	94.91
NY422	101.69	94.91
NY424	101.69	94.91
NY427	101.69	94.91
NY428	101.69	94.91
NY430	101.69	94.91
NY431	101.69	94.91
NY433	69.43	64.80
NY443	85.67	79.97
NY447	101.69	94.91
NY449	87.46	81.64
NY501	101.69	94.91
NY503	101.69	94.91
NY504	93.57	87.34
NY505	88.73	82.82
NY512	101.69	94.91
NY513	101.69	94.91
NY516	101.69	94.91
NY519	101.69	94.91
NY521	93.57	87.34
NY527	93.57	87.34
NY529	114.52	106.88
NY530	88.93	83.01
NY532	101.69	94.91
NY534	85.67	79.97
NY535	101.69	94.91
NY538	101.69	94.91
NY541	75.88	70.82
NY552	85.67	79.97
NY557	101.69	94.91
NY561	101.69	94.91
NY562	101.69	94.91
NY564	101.69	94.91
NY630	101.69	94.91
NY888	145.66	135.96
NY889	73.20	68.32
NY891	145.66	135.96
NY895	145.66	135.96
NY904	126.62	118.16
OH001	82.35	76.85
OH002	74.79	69.79
OH003	86.82	81.02
OH004	84.07	78.45
OH005	76.69	71.58
OH006	86.29	80.54
OH007	85.40	79.71
OH008	74.79	69.79
OH009	70.99	66.26
OH010	70.99	66.26
OH012	86.82	81.02
OH014	75.29	70.27
OH015	84.07	78.45
OH016	73.57	68.67
OH018	73.57	68.67
OH019	72.27	67.46
OH020	70.99	66.26
OH021	76.69	71.58
OH022	76.69	71.58
OH024	70.99	66.26
OH025	86.82	81.02
OH026	72.16	67.34
OH027	86.82	81.02
OH028	75.59	70.55
OH029	83.77	78.18
OH030	70.99	66.26
OH031	85.40	79.71
OH032	72.19	67.38
OH033	70.99	66.26
OH034	72.19	67.38
OH035	70.99	66.26
OH036	71.32	66.57
OH037	70.99	66.26
OH038	84.07	78.45
OH039	70.99	66.26
OH040	70.99	66.26
OH041	70.99	66.26
OH042	86.82	81.02
OH043	82.35	76.85
OH044	74.79	69.79
OH045	70.99	66.26
OH046	70.99	66.26
OH047	70.99	66.26
OH049	84.07	78.45
OH050	70.99	66.26
OH053	70.99	66.26
OH054	73.97	69.04
OH056	70.99	66.26
OH058	70.99	66.26
OH059	82.35	76.85
OH060	70.99	66.26
OH061	72.63	67.78
OH062	76.69	71.58
OH063	70.99	66.26
OH066	70.99	66.26
OH067	70.99	66.26
OH069	70.99	66.26

PHA No.	A Rate	B Rate
OH070	82.35	76.85
OH071	86.29	80.54
OH072	70.99	66.26
OH073	86.82	81.02
OH074	72.98	68.11
OH075	70.99	66.26
OH076	70.99	66.26
OH077	70.99	66.26
OH078	70.99	66.26
OH079	82.35	76.85
OH080	72.72	67.86
OH081	73.57	68.67
OH082	71.17	66.41
OH083	82.35	76.85
OH085	86.29	80.54
OH086	70.99	66.26
OH882	86.82	81.02
OK002	81.06	75.66
OK005	78.85	73.59
OK006	78.72	73.47
OK024	78.72	73.47
OK027	78.72	73.47
OK032	78.72	73.47
OK033	78.85	73.59
OK044	78.72	73.47
OK062	78.72	73.47
OK067	78.72	73.47
OK073	78.85	73.59
OK095	80.92	75.53
OK096	78.72	73.47
OK099	78.72	73.47
OK111	78.72	73.47
OK118	78.72	73.47
OK139	81.06	75.66
OK142	78.85	73.59
OK146	78.72	73.47
OK148	80.92	75.53
OK901	81.06	75.66
OR001	107.45	100.27
OR002	107.45	100.27
OR003	108.03	100.84
OR005	100.54	93.85
OR006	123.48	115.25
OR007	103.36	96.47
OR008	115.36	107.67
OR011	115.36	107.67
OR014	115.36	107.67
OR015	122.67	114.49
OR016	107.45	100.27
OR017	98.67	92.10
OR019	109.07	101.79
OR020	108.03	100.84
OR022	107.45	100.27
OR026	109.35	102.06
OR027	98.67	92.10
OR028	107.45	100.27
OR031	111.76	104.32
OR032	103.36	96.47
OR034	118.61	110.70
PA001	75.45	70.42
PA002	108.11	100.91
PA003	73.14	68.27
PA004	92.08	85.93
PA005	75.45	70.42
PA006	75.45	70.42
PA007	108.11	100.91
PA008	94.23	87.95
PA009	89.79	83.80
PA010	75.45	70.42
PA011	92.08	85.93
PA012	108.11	100.91
PA013	91.60	85.49
PA014	75.45	70.42
PA015	75.45	70.42
PA016	80.29	74.93
PA017	75.45	70.42
PA018	75.45	70.42
PA019	77.43	72.27
PA020	85.01	79.34
PA021	77.43	72.27
PA022	86.50	80.72
PA023	108.11	100.91
PA024	92.08	85.93
PA026	73.71	68.79
PA027	69.86	65.19
PA028	98.20	91.66
PA029	75.47	70.44
PA030	73.14	68.27
PA031	79.73	74.42
PA032	76.95	71.81
PA033	73.71	68.79
PA034	82.27	76.77
PA035	94.23	87.95
PA036	95.70	89.33
PA037	80.29	74.93
PA038	73.14	68.27
PA039	88.63	82.72
PA041	73.54	68.64
PA042	73.14	68.27
PA043	73.14	68.27
PA044	73.14	68.27
PA045	74.35	69.39
PA046	108.11	100.91
PA047	73.14	68.27
PA048	86.39	80.63
PA050	71.76	66.99
PA051	108.11	100.91
PA052	94.23	87.95
PA053	74.35	69.39
PA054	72.75	67.89
PA055	74.35	69.39
PA056	71.14	66.39
PA057	73.14	68.27
PA058	73.71	68.79
PA059	71.14	66.39
PA060	74.35	69.39
PA061	74.35	69.39
PA063	74.35	69.39
PA064	71.76	66.99
PA065	74.35	69.39
PA067	92.08	85.93
PA068	71.76	66.99
PA069	79.73	74.42
PA071	89.79	83.80
PA073	73.14	68.27
PA074	71.76	66.99
PA075	94.23	87.95
PA076	92.08	85.93
PA077	72.75	67.89
PA078	119.36	111.41
PA079	73.71	68.79
PA080	72.75	67.89
PA081	92.08	85.93
PA082	84.14	78.53
PA083	73.78	68.86
PA085	69.86	65.19
PA086	71.14	66.39
PA087	91.60	85.49
PA088	102.64	95.79
PA090	95.70	89.33
PA091	87.25	81.43
PA092	71.94	67.14
RI001	140.42	131.07
RI002	140.42	131.07
RI003	140.42	131.07
RI004	140.42	131.07
RI005	125.73	117.34
RI006	140.42	131.07
RI007	140.42	131.07
RI008	114.44	106.81
RI009	140.42	131.07
RI010	140.42	131.07
RI011	140.42	131.07
RI012	140.42	131.07
RI014	140.42	131.07
RI015	140.42	131.07
RI016	140.42	131.07
RI017	140.42	131.07
RI018	140.42	131.07
RI019	140.42	131.07
RI020	140.42	131.07
RI022	140.42	131.07
RI024	140.42	131.07
RI026	140.42	131.07
RI027	140.42	131.07
RI028	140.42	131.07
RI029	140.42	131.07
RI901	140.42	131.07
RQ005	88.34	82.45
RQ006	88.34	82.45
RQ007	82.19	76.71
RQ008	88.34	82.45
RQ009	82.19	76.71
RQ010	82.19	76.71
RQ011	88.34	82.45
RQ012	82.19	76.71
RQ013	88.34	82.45
RQ014	88.34	82.45
RQ015	88.34	82.45
RQ016	88.34	82.45
RQ017	82.19	76.71
RQ018	82.19	76.71
RQ019	88.34	82.45
RQ020	90.26	84.24
RQ021	88.34	82.45
RQ022	88.34	82.45
RQ023	88.34	82.45
RQ024	88.34	82.45
RQ025	88.34	82.45
RQ026	82.19	76.71
RQ027	88.34	82.45
RQ028	88.34	82.45
RQ029	82.19	76.71
RQ030	82.19	76.71
RQ031	90.26	84.24
RQ032	88.34	82.45
RQ033	82.19	76.71
RQ034	88.34	82.45
RQ035	82.19	76.71
RQ036	88.34	82.45
RQ037	82.19	76.71
RQ038	88.34	82.45
RQ039	90.26	84.24
RQ040	90.26	84.24
RQ041	82.19	76.71
RQ042	82.19	76.71
RQ043	82.19	76.71
RQ044	88.34	82.45
RQ045	88.34	82.45
RQ046	82.19	76.71
RQ047	88.34	82.45
RQ048	82.19	76.71
RQ049	88.34	82.45
RQ050	88.34	82.45
RQ052	82.19	76.71
RQ053	88.34	82.45
RQ054	88.34	82.45
RQ055	88.34	82.45
RQ056	88.34	82.45
RQ057	82.19	76.71
RQ058	82.19	76.71
RQ059	82.19	76.71

PHA No.	A Rate	B Rate
RQ060	82.19	76.71
RQ061	82.19	76.71
RQ062	82.19	76.71
RQ063	88.34	82.45
RQ064	88.34	82.45
RQ065	82.19	76.71
RQ066	82.19	76.71
RQ067	82.19	76.71
RQ068	82.19	76.71
RQ069	82.19	76.71
RQ070	88.34	82.45
RQ071	82.19	76.71
RQ072	88.34	82.45
RQ073	82.19	76.71
RQ074	82.19	76.71
RQ075	88.34	82.45
RQ077	88.34	82.45
RQ080	82.19	76.71
RQ081	88.34	82.45
RQ082	88.34	82.45
RQ083	88.34	82.45
SC001	86.15	80.41
SC002	87.09	81.28
SC003	79.50	74.20
SC004	79.50	74.20
SC005	79.50	74.20
SC007	87.13	81.33
SC008	79.50	74.20
SC015	78.26	73.04
SC016	79.50	74.20
SC018	79.50	74.20
SC019	81.13	75.72
SC020	79.50	74.20
SC021	78.26	73.04
SC022	91.20	85.11
SC023	79.50	74.20
SC024	86.15	80.41
SC025	79.50	74.20
SC026	81.13	75.71
SC027	79.50	74.20
SC028	78.26	73.04
SC029	79.50	74.20
SC030	78.26	73.04
SC031	78.26	73.04
SC032	79.50	74.20
SC033	78.26	73.04
SC034	79.50	74.20
SC035	78.26	73.04
SC036	91.20	85.11
SC037	79.50	74.20
SC046	91.20	85.11
SC056	86.15	80.41
SC057	86.15	80.41
SC059	78.26	73.04
SC911	87.09	81.28
SD010	84.30	78.68
SD011	81.74	76.29
SD014	81.74	76.29
SD016	84.30	78.68
SD026	81.74	76.29
SD034	81.74	76.29
SD035	88.82	82.89
SD036	81.74	76.29
SD037	81.74	76.29
SD039	84.30	78.68
SD043	81.74	76.29
SD045	84.30	78.68
SD047	81.74	76.29
SD048	81.74	76.29
SD055	81.74	76.29
SD056	81.74	76.29
SD057	81.74	76.29
SD058	81.74	76.29
SD059	81.74	76.29
TN001	80.99	75.59
TN002	76.56	71.45
TN003	76.56	71.45
TN004	82.32	76.83
TN005	89.75	83.77
TN006	76.56	71.45
TN007	76.56	71.45
TN012	76.56	71.45
TN013	73.99	69.06
TN020	89.75	83.77
TN024	73.99	69.06
TN026	73.99	69.06
TN035	89.75	83.77
TN038	76.56	71.45
TN042	73.99	69.06
TN054	76.56	71.45
TN062	73.99	69.06
TN065	76.56	71.45
TN066	76.56	71.45
TN076	76.56	71.45
TN079	89.75	83.77
TN088	76.56	71.45
TN113	76.56	71.45
TN117	82.32	76.83
TN903	89.75	83.77
TQ901	140.70	131.33
TX001	100.65	93.95
TX003	85.52	79.80
TX004	96.17	89.76
TX005	91.30	85.23
TX006	88.48	82.60
TX007	78.45	73.22
TX008	90.22	84.19
TX009	103.21	96.34
TX010	77.37	72.21
TX011	77.37	72.21
TX012	91.30	85.23
TX014	77.37	72.21
TX016	74.54	69.57
TX017	91.30	85.23
TX018	77.37	72.21
TX019	74.54	69.57
TX021	74.54	69.57
TX023	88.41	82.50
TX025	78.45	73.22
TX027	103.21	96.34
TX028	77.56	72.38
TX029	77.56	72.38
TX030	77.37	72.21
TX031	100.65	93.95
TX032	91.30	85.23
TX034	88.41	82.50
TX035	74.73	69.73
TX037	88.41	82.50
TX039	74.54	69.57
TX042	74.54	69.57
TX044	74.54	69.57
TX046	77.56	72.38
TX048	74.54	69.57
TX049	74.54	69.57
TX051	77.56	72.38
TX062	77.56	72.38
TX064	77.56	72.38
TX065	78.45	73.22
TX072	74.54	69.57
TX073	77.56	72.38
TX075	74.54	69.57
TX085	107.21	100.05
TX087	100.65	93.95
TX095	103.21	96.34
TX096	74.54	69.57
TX105	74.54	69.57
TX111	79.18	73.90
TX114	74.54	69.57
TX128	103.21	96.34
TX134	74.54	69.57
TX137	77.37	72.21
TX147	74.54	69.57
TX152	74.54	69.57
TX158	77.37	72.21
TX163	90.22	84.19
TX164	90.22	84.19
TX173	78.45	73.22
TX174	90.22	84.19
TX175	74.54	69.57
TX177	77.56	72.38
TX178	74.54	69.57
TX183	74.54	69.57
TX189	74.54	69.57
TX193	88.48	82.60
TX197	77.37	72.21
TX201	74.54	69.57
TX202	77.56	72.38
TX206	78.45	73.22
TX208	77.37	72.21
TX210	77.37	72.21
TX217	74.54	69.57
TX224	77.56	72.38
TX236	77.37	72.21
TX242	74.54	69.57
TX257	77.37	72.21
TX259	100.65	93.95
TX264	100.65	93.95
TX266	100.65	93.95
TX272	74.54	69.57
TX284	74.54	69.57
TX298	74.54	69.57
TX300	74.54	69.57
TX302	90.22	84.19
TX303	88.48	82.60
TX309	74.54	69.57
TX313	90.22	84.19
TX322	100.65	93.95
TX327	77.37	72.21
TX330	74.54	69.57
TX332	74.54	69.57
TX335	74.54	69.57
TX341	77.37	72.21
TX343	88.48	82.60
TX349	96.17	89.76
TX350	88.48	82.60
TX358	74.54	69.57
TX376	74.54	69.57
TX377	100.65	93.95
TX378	74.73	69.73
TX381	74.54	69.57
TX392	103.21	96.34
TX395	77.01	71.87
TX396	74.54	69.57
TX397	74.54	69.57
TX421	74.54	69.57
TX431	96.17	89.76
TX432	85.52	79.80
TX433	96.17	89.76
TX434	103.21	96.34
TX435	103.21	96.34
TX436	103.21	96.34
TX439	85.52	79.80
TX440	91.30	85.23
TX441	91.30	85.23
TX444	77.37	72.21
TX445	77.56	72.38
TX447	77.56	72.38
TX448	77.56	72.38
TX449	74.54	69.57
TX452	88.48	82.60
TX454	74.54	69.57
TX455	99.42	92.79

PHA No.	A Rate	B Rate
TX456	88.21	82.33
TX457	83.33	77.77
TX458	77.37	72.21
TX459	86.77	80.98
TX461	79.30	74.03
TX470	77.37	72.21
TX472	77.37	72.21
TX480	100.65	93.95
TX481	77.37	72.21
TX482	77.37	72.21
TX483	91.30	85.23
TX484	98.60	92.02
TX485	74.54	69.57
TX486	75.77	70.71
TX488	74.54	69.57
TX493	103.21	96.34
TX495	96.17	89.76
TX497	77.56	72.38
TX498	79.18	73.90
TX499	77.37	72.21
TX500	74.54	69.57
TX505	91.30	85.23
TX509	78.45	73.22
TX511	74.54	69.57
TX512	74.54	69.57
TX514	77.37	72.21
TX516	74.54	69.57
TX519	74.54	69.57
TX522	103.21	96.34
TX523	79.18	73.90
TX526	103.40	96.51
TX534	99.42	92.79
TX535	74.54	69.57
TX537	77.37	72.21
TX542	77.37	72.21
TX559	103.21	96.34
TX560	91.30	85.23
TX901	91.30	85.23
UT002	93.48	87.25
UT003	93.48	87.25
UT004	93.48	87.25
UT006	95.97	89.56
UT007	93.48	87.25
UT009	93.48	87.25
UT011	93.48	87.25
UT014	109.16	101.87
UT016	109.16	101.87
UT020	93.48	87.25
UT021	96.27	89.86
UT022	93.48	87.25
UT025	93.48	87.25
UT026	93.48	87.25
UT028	109.16	101.87
UT029	109.16	101.87
UT030	93.48	87.25
UT031	95.97	89.56
VA001	94.56	88.26
VA002	76.56	71.45
VA003	94.56	88.26
VA004	139.43	130.14
VA005	85.78	80.05
VA006	94.56	88.26
VA007	85.78	80.05
VA010	74.09	69.15
VA011	75.49	70.45
VA012	94.56	88.26
VA013	76.34	71.25
VA014	76.34	71.25
VA015	69.70	65.05
VA016	95.92	89.52
VA017	94.56	88.26
VA018	69.70	65.05
VA019	139.43	130.14
VA020	85.78	80.05
VA021	69.70	65.05
VA022	69.70	65.05
VA023	69.70	65.05
VA024	69.70	65.05
VA025	94.56	88.26
VA028	139.43	130.14
VA030	69.70	65.05
VA031	76.56	71.45
VA032	76.56	71.45
VA034	69.70	65.05
VA035	139.43	130.14
VA036	95.92	89.52
VA037	69.87	65.21
VA038	69.70	65.05
VA039	94.56	88.26
VA040	69.70	65.05
VA041	94.56	88.26
VA042	76.56	71.45
VA044	70.54	65.83
VA046	139.43	130.14
VA901	85.78	80.05
VQ901	121.79	113.68
VT001	116.52	108.75
VT002	99.28	92.67
VT003	102.70	95.85
VT004	101.67	94.89
VT005	95.19	88.84
VT006	116.52	108.75
VT008	95.19	88.84
VT009	96.21	89.80
VT901	116.52	108.75
WA001	132.29	123.44
WA002	132.29	123.44
WA003	116.84	109.05
WA004	109.88	102.54
WA005	112.33	104.86
WA006	132.29	123.44
WA007	90.07	84.06
WA008	107.45	100.27
WA011	132.29	123.44
WA012	102.05	95.23
WA013	101.96	95.15
WA014	84.72	79.08
WA017	86.17	80.43
WA018	109.88	102.54
WA020	90.07	84.06
WA021	102.05	95.23
WA024	129.09	120.46
WA025	125.58	117.19
WA036	116.84	109.05
WA039	132.29	123.44
WA042	106.10	99.02
WA049	120.71	112.65
WA054	112.33	104.86
WA055	101.61	94.85
WA057	110.31	102.96
WA061	114.81	107.16
WA064	104.48	97.50
WA071	92.85	86.65
WI001	80.67	75.29
WI002	76.17	71.10
WI003	84.78	79.13
WI006	74.97	69.97
WI011	66.19	61.77
WI031	65.11	60.77
WI043	65.11	60.77
WI045	65.11	60.77
WI047	65.11	60.77
WI048	65.11	60.77
WI060	109.06	101.79
WI064	70.68	65.97
WI065	65.11	60.77
WI068	66.19	61.77
WI069	66.19	61.77
WI070	65.11	60.77
WI083	76.17	71.10
WI085	65.11	60.77
WI091	65.11	60.77
WI096	65.11	60.77
WI127	65.11	60.77
WI131	65.11	60.77
WI142	76.17	71.10
WI160	65.11	60.77
WI166	65.11	60.77
WI183	69.59	64.94
WI186	65.11	60.77
WI193	65.11	60.77
WI195	78.77	73.51
WI201	76.17	71.10
WI203	70.68	65.97
WI204	66.19	61.77
WI205	65.11	60.77
WI206	65.11	60.77
WI208	65.11	60.77
WI213	65.11	60.77
WI214	84.78	79.13
WI218	76.17	71.10
WI219	70.68	65.97
WI221	65.11	60.77
WI222	65.11	60.77
WI231	65.11	60.77
WI233	65.11	60.77
WI237	66.33	61.91
WI241	65.11	60.77
WI244	71.48	66.72
WI245	65.11	60.77
WI246	65.11	60.77
WI248	65.11	60.77
WI256	65.11	60.77
WI901	76.17	71.10
WV001	87.67	81.83
WV003	70.99	66.26
WV004	72.27	67.46
WV005	69.38	64.75
WV006	73.07	68.19
WV009	73.84	68.92
WV010	77.27	72.12
WV015	69.38	64.75
WV016	75.29	70.27
WV017	66.25	61.83
WV018	66.25	61.83
WV027	67.63	63.13
WV034	66.25	61.83
WV035	68.79	64.21
WV037	72.27	67.46
WV039	69.38	64.75
WV042	69.38	64.75
WV045	66.25	61.83
WY002	95.48	89.12
WY003	80.25	74.90
WY004	115.04	107.38
WY013	80.25	74.90

[FR Doc. 2024–16849 Filed 7–31–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2024–0056; FXES11130800000–245–FF08E00000]

Marine Mammal Protection Act; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA). With some exceptions, the MMPA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The MMPA also requires that we invite public comment before issuing permits for any activity otherwise prohibited with respect to any species.

DATES: We must receive comments by September 3, 2024.

ADDRESSES:

Obtaining Documents: The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–R8–ES–2024–0056.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R8–ES–2024–0056.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2024–0056; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rachel Henry at (805) 448–7484 or *MMPAPermitsR8ES@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on permit applications. Before issuing any requested permits, we take into consideration any information that we receive during the public comment period. You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov.*

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the MMPA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Service regulations regarding permits for any activity otherwise prohibited by the MMPA with respect to any marine mammals are available in title 50 of the Code of Federal Regulations in part 18. Concurrent with publishing a notice in the **Federal Register**, we forward copies of marine mammal applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

III. Permit Application

We invite comments on the following application.

Applicant: Year on Earth Productions, Plimsoll Productions, Clifton, Bristol, United Kingdom; Permit No. PER9423620; Kovacs Films, Ernest Kovac, Monterey, California, Permit No. PER11105737

The applicants request a permit to photograph (video and still photography) southern sea otter (*Enhydra lutris nereis*) in California, for the purposes of commercial photography. This notification covers activities to be conducted by the applicants over a 5-year period.

IV. Next Steps

After the comment period closes, we will make a decision regarding permit issuance. If we issue a permit to the applicant listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and its implementing regulations.

Angela Picco,

Regional Ecological Services Program Manager, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2024–16950 Filed 7–31–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24GA00EZ50300; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval: Comment Request; U.S. Geological Survey, Generic Clearance for Natural Hazard Disaster-Related Data Collection

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 30, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jack Friedman by email at *jfriedman@usgs.gov,* or by telephone at 608–636–0796. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval by the Office of Management and Budget (OMB). As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

Abstract: The mission of the U.S. Geological Survey is to serve the Nation by providing reliable scientific information to describe and understand the Earth; minimize loss of life and property from natural disasters; manage water, biological, energy, and mineral resources; and enhance and protect our quality of life (USGS, SM 120.1.2). Regarding hazard events, the USGS provides information needed by its customers before, during, and after hazard events to minimize the loss of life and property. Hazards include, but are not limited to, earthquakes, volcanoes, landslides, geomagnetic (solar) storms, floods, drought, coastal erosion, tsunamis, wildland fire, wildlife disease, and other biological and chemical threats (USGS, SM 120.1.3.A). Part of the USGS's function is to communicate with emergency managers, public safety officials, and others during hazard events and to conduct post-crisis analysis (USGS, SM 120.1.3.A.6–7). With this in mind, the USGS proposes to conduct a number of data collection efforts within the topic areas of hazards preparedness, response, and recovery studies and community resilience and sustainability. These efforts include studies of specific disaster events (*e.g.,* wildfire, hurricane, earthquake, volcano, landslide, tsunami, geomagnetic (*i.e.,* space weather), and flood); assessments of the effectiveness of USGS science to meet the needs of emergency managers, public safety officials, and others; and evaluations of the usability and utility of USGS natural hazard-related guidance or other products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person video and audio collections), interviews, questionnaires, and focus groups. The USGS will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. The data collected will be used to decrease negative impacts of hazard events on society, improve the flow of actionable information to emergency managers and public safety officers, and, in turn, increase community resilience within the United States. Steps will be taken to protect confidentiality of respondents in each activity covered by this request.

The USGS utilizes this clearance to conduct research in support of topic areas of natural hazard-related disaster studies and community resilience. This type of research is directly related to a range of hazards that are unpredictable in their number and scale during a given year. Additionally, some hazard events may require multiple studies resulting in multiple collections. Therefore, in light of the uncertainties regarding the frequency and extent of severe hazard events, the USGS is requesting the ICR annual response allotment be set at 4,500 responses and the ICR annual hours allotment at 2,000 hours.

The USGS will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. The USGS may also utilize observational techniques to collect this information.

Title of Collection: Generic Clearance for Hazard Event-Related Data Collection.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals or households; emergency managers; first responders; weather forecasters; members of the media; water, power, transportation, and communications infrastructure operators; businesses or other for-profit

organizations; not-for-profit institutions; State, local or Tribal government; Federal government; standards-making bodies; universities.

Total Estimated Number of Annual Respondents: 2,500.

Total Estimated Number of Annual Responses: 4,500 (2,500 15-minute surveys; 1,500 15-minute follow-up surveys; 500 2-hour follow-up interviews).

Estimated Completion Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an interview.

Total Estimated Number of Annual Burden Hours: 2,000.

Respondent's Obligation: Voluntary.

Frequency of Collection: The vast majority will be one-time data collection. It is possible that follow-up data collection (pre-/post-conditions) could occur if data are collected from respondents who are impacted by more than one hazard-related incident or a prolonged incident, but we expect this to be very rare.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person is required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Michael Grimm,

Associate Director for Natural Hazards, USGS.

[FR Doc. 2024–16985 Filed 7–31–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Tribal Tourism Grant Program; Solicitation of Proposals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Through this notice, the Office of the Assistant Secretary—Indian Affairs, through the Office of Indian Economic Development (OIED), announces a forthcoming FY 2024 Tribal Tourism Grant Program (TTGP) Notice of Funding Opportunity (NOFO) for Tribal tourism projects.

DATES: Proposals must be submitted to no later than 5 p.m. eastern time by the deadline indicated in the NOFO and posting on *Grants.gov.*

ADDRESSES: Proposals must be submitted to *https://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Wilson, Grant Management Specialist, Office of Indian Economic Development, telephone (505) 917–3235; email: *dennis.wilson@bia.gov.* If you have questions regarding the application process, please contact Ms. Jo Ann Metcalfe, Grant Officer, telephone (410) 703–3390; email: *jo.metcalfe@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Additional Program information can be found at: *https://www.bia.gov/service/grants/ttgp.*

SUPPLEMENTARY INFORMATION: This Office of Indian Economic Development (OIED) announcement for the forthcoming FY 2024 Tribal Tourism Grant Program (TTGP) Notice of Funding Opportunity (NOFO) provides interested applicants time to prepare their applications prior to the opening of the application period. The OIED expects the official NOFO solicitation to run for approximately 90 days on *Grants.gov* to receive applications. Additional information for the FY 2024 TTGP NOFO, as well as a link to the final NOFO posting on *Grants.gov,* will be available on OIED's website at the following URL: *https://www.bia.gov/service/grants/ttgp.* Eligible applicants include:

- Native American Tribal Governments (federally recognized);
- Native American Tribal Organizations (other than federally recognized); and
- Indian Tribes and Tribal Organizations, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (ISDEAA) (25 U.S.C. 5304), including Tribal Consortia.

The FY 2024 TTGP cohort anticipates awarding $1.4 million in total funding. The OIED estimates awarding 10 to 15 grants, ranging in value from $75,000 to $150,000 in total funding for a 24-month period of performance. The FY 2024 TTGP is to fund implementation projects for tribal tourism which will be achieved within the period of performance. The forthcoming NOFO will provide the structure by which the applications will be reviewed and evaluated as they implement their tourism project.

While the OIED will not accept applications until the open solicitation period, interested applicants may submit questions to the grant program contacts. OIED will not fund an implementation project that has comparable activities previously carried out under other Federal assistance programs or has construction or construction related components. Applicants are encouraged to conduct the required registration activities for the System for Award Management (SAM), Unique Entity Identifier (UEI), the Automated Standard Application for Payment (ASAP), as well as acquire Tribal authorizations.

The required method of submitting proposals during the open solicitation period is through *Grants.gov*. For additional information on how to apply, see the grant instructions available at: *https://apply07.grants.gov/help/html/help/Applicants/HowToApplyForGrants.htm.*

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–16904 Filed 7–31–24; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–608 and 731–TA–1420 (Review)]

Steel Racks From China; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on steel racks from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 1, 2024. To be assured of consideration, the deadline for responses is September 3, 2024. Comments on the adequacy of responses may be filed with the Commission by October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), 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 16, 2019, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of steel racks from China (84 FR 48584). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the *Domestic Like Product* as consisting of all steel racks, coextensive with the scope of these investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of steel racks.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders. In these reviews, the *Order Date* is September 16, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on September 3, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on October 10, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document

filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–611, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject*

Merchandise imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 24, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–16628 Filed 7–31–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Semiconductor Devices and Products Containing the Same, DN 3763;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Infineon Technologies Americas Corp. and Infineon Technologies Austria AG on July 26, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices and products containing the same. The complaint names as respondents: Innoscience (Suzhou) Technology Company, Ltd. of China; Innoscience (Suzhou) Semiconductor Co., Ltd. of China; Innoscience (Zhuhai) Technology Company, Ltd. of China; Innoscience America, Inc. of Santa Clara, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3763'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary *atEDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 26, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–16901 Filed 7–31–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–609 and 731–TA–1421 (Review)]

Steel Trailer Wheels From China; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on steel trailer wheels from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 1, 2024. To be assured of consideration, the deadline for responses is September 3, 2024. Comments on the adequacy of responses may be filed with the Commission by October 10, 2024.

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 3, 2019, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of steel trailer wheels from China (84 FR 45952). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined the *Domestic Like Product* as consisting of steel trailer wheels and rims for towable mobile homes, coextensive with the scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all U.S. producers of steel trailer wheels, except the Carlstar Group LLC.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is September 3, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on September 3, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on October 10, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–612, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the

Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 24, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–16632 Filed 7–31–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1410]

Certain Disposable Vaporizer Devices; Designation of Temporary Relief Proceedings as More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has designated temporary relief proceedings in the above-captioned investigation as ''more complicated.''

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 22, 2024, based on a complaint filed on behalf of RAI Strategic Holdings, Inc.; R.J. Reynolds Vapor Company; R.J. Reynolds Tobacco Company; and RAI Services Company (collectively, ''Complainants''), all of Winston-Salem, North Carolina. 89 FR 59158 (Jul. 22, 2024). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain disposable vaporizer devices and components thereof by reason of the infringement of certain claims of U.S. Patent No. 11,925,202 (''the '202 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The Commission's notice of investigation names thirty-five (35) respondents. *Id.* at 59159–160.

Complainants filed a motion for temporary relief concurrently with the complaint, requesting that the Commission issue a temporary exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain disposable vaporizer devices and components thereof during the course of the Commission's investigation. The motion for temporary relief was provisionally accepted and referred to the presiding administrative law judge (''ALJ'') for investigation. *Id.* at 59159.

On July 26, 2024, the ALJ issued Order No. 6, designating the temporary relief proceeding as ''more complicated'' pursuant to Commission Rule 210.60, on the basis of the complexity of the issues raised in Complainants' motion for temporary relief. *See* Order No. 6 at 3 (Jul. 26, 2024).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: July 29, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–16999 Filed 7–31–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Fifth Review)]

Fresh Tomatoes From Mexico; Institution of a Five-Year Review

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted August 1, 2024. To be assured of consideration, the deadline for responses is September 3, 2024. Comments on the adequacy of responses may be filed with the Commission by October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), 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.—Effective November 1, 1996, the Department of Commerce (''Commerce'') suspended its antidumping duty investigation on imports of fresh tomatoes from Mexico (61 FR 56618). Effective the same day, the Commission suspended the final phase of its investigation (61 FR 58217, November 13, 1996). On October 1, 2001, Commerce initiated and the Commission instituted their first five-year reviews of the suspended investigations (66 FR 49926, 49975). After the withdrawal from the suspension agreement by certain Mexican tomato growers, Commerce terminated the suspension agreement (67 FR 50858, August 6, 2002), and both Commerce and the Commission terminated their first five-year reviews and resumed their antidumping investigations, effective July 30, 2002 (67 FR 53361, August 15, 2002; 67 FR 56854, September 5, 2002). On December 16, 2002, Commerce and the Commission suspended their resumed investigations when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico (67 FR 77044, December 16, 2002; 67 FR 78815, December 26, 2002). On November 1, 2007, Commerce initiated and the Commission instituted their second five-year reviews of the suspended investigations (72 FR 61861, 61903, November 1, 2007). Once again, based on the withdrawal from the suspension agreement by certain Mexican tomato growers, Commerce terminated the suspension agreement (73 FR 2887, January 16, 2008), and both Commerce and the Commission terminated their second five-year reviews and resumed their antidumping investigations, effective January 18, 2008 (73 FR 2888, January 18, 2008; 73 FR 5869, January 31, 2008). The resumed antidumping investigations were again suspended by Commerce and the Commission when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico, effective January 22, 2008 (73 FR 4831, January 28, 2008; 73 FR 7762, February 11, 2008). On December 1, 2012, Commerce initiated its third five-year review of the suspended investigation (77 FR 71684, December 3, 2012), and on December 3, 2012, the Commission instituted its third five-year review of the suspended investigation (77 FR 71629, December 3, 2012). Based on the withdrawal from the suspension agreement by certain Mexican tomato growers/exporters, Commerce terminated the suspension agreement and its third five-year review of the suspended investigation, and resumed its investigation, effective March 1, 2013 (78 FR 14771, March 7, 2013). On March 4, 2013, the Commission terminated its review of the suspended investigation and resumed the final phase of its investigation (78 FR 16529, March 15, 2013). Also on March 4, 2013, Commerce signed a new agreement with certain growers/exporters of fresh tomatoes from Mexico, and again suspended its resumed investigation (78 FR 14967, March 8, 2013). On March 5, 2013, the Commission suspended its resumed final phase investigation (78 FR 16530, March 15, 2013). On February 1, 2018, Commerce initiated and the Commission instituted their fourth five-year reviews of the suspended investigations (83 FR 4641, 4676, February 1, 2018). After receipt of a request by the Florida Tomato Exchange, an association of domestic growers and packers of fresh tomatoes and a petitioner in the original investigation, Commerce terminated the suspension agreement and resumed its investigation, effective May 13, 2019 (84 FR 20858, May 13, 2019). Also on May 7, 2019, the Commission terminated its review of the suspended investigation and resumed the final phase of its investigation (84 FR 21360, May 14, 2019; 84 FR 27805, June 14, 2019). On September 19, 2019, Commerce signed a new agreement with certain growers/exporters of fresh tomatoes from Mexico, and again suspended its resumed investigation (84 FR 49987, September 24, 2019). On September 24, 2019, the Commission suspended its resumed final phase investigation (84 FR 54639, October 10, 2019). Following requests submitted by the Florida Tomato Exchange and by Red Sun Farms Virginia LLC, Commerce resumed its final investigation and made an affirmative determination (84 FR 57401, October 25, 2019). On October 17, 2019, the Commission continued the final phase of its investigation (84 FR 56837, October 23, 2019) and, on December 9, 2019, made an affirmative determination (84 FR 67958, December 12, 2019). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined a single *Domestic Like Product* consisting of all fresh tomatoes coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* to include all domestic producers of fresh tomatoes, except for certain domestic producers that were excluded as related parties.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and

substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on September 3, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on October 10, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also 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. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 24–5–610, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of

subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2018.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2018, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 24, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–16630 Filed 7–31–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1411]

Certain Photodynamic Therapy Systems, Components Thereof, and Pharmaceutical Products Used in Combination With the Same; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 26, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Sun Pharmaceutical Industries, Inc. of Princeton, New Jersey. A letter supplementing the complaint was filed on July 9, 2024. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain photodynamic therapy systems, components thereof, and pharmaceutical products used in combination with the same by reason of the infringement of certain claims of U.S. Patent No. 11,697,028 (''the '028 Patent'') and U.S. Patent No. 11,446,512 (''the '512 Patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Orndoff, The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 26, 2024, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, 4–6, 16, 17, and 19–21 of the '028 patent and claims 1–3, 5, 8, and 20 of the '512 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''illuminators for photodynamic therapy with light sources on at least five panels, assembled or disassembled, replacement parts, and 5-aminolevulinic acid used in combination with the illuminators for photodynamic therapy'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Sun Pharmaceutical Industries, Inc., 2 Independence Way, Princeton, NJ 08540.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Biofrontera Inc., 120 Presidential Way, Suite 300, Woburn, MA 01801

Biofrontera Pharma GmbH, Hemmelrather Weg 201, 51377, Leverkusen, Germany

Biofrontera Bioscience GmbH, Hemmelrather Weg 201, 51377, Leverkusen, Germany, Biofrontera AG, Hemmelrather Weg 201, 51377, Leverkusen, Germany

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commiss ion's Rules of Practice and Procedure, 19 CFR 210.10 (2024).

By order of the Commission.

Issued: July 26, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–16934 Filed 7–31–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0296]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Census of Medical Examiner and Coroner Offices (CMEC)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Justice Statistics (BJS), Department of Justice (DOJ), will be submitting the following

information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until September 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Matt Durose (email: *Matt.Durose@usdoj.gov;* telephone: 202–598–0295), Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on May 21, 2024, allowing a 60-day comment period. BJS received one comment under the 60-day notice that is addressed in the full package submitted to OMB. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number [1121–0296]. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* 2023 Census of Medical Examiner and Coroner Offices (CMEC).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CMEC–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* Affected public are state and local government agencies. The 2023 CMEC is revised from the 2018 CMEC. BJS plans to field the 2023 CMEC from September 2024 through July 2025. Respondents will be the staff at MEC offices and Texas justices of the peace.

Abstract: The Bureau of Justice Statistics (BJS) 2023 Census of Medical Examiner and Coroner Offices (CMEC) will provide comprehensive statistics regarding the organizational structure, operations, policies and procedures, finances, and resources of the approximately 2,300 medical examiner and coroner (MEC) offices in 2023 nationwide. In the United States, medicolegal death investigations are provided by MEC offices whose purpose is to determine the cause and manner of death. As such, these offices are valuable, unique sources of information to many stakeholders, including the federal government, local law enforcement, the court system, the public health community, and families. The 2023 CMEC will generate an enumeration of the number and type of MEC offices operating in the United States in 2023, staff at these offices, budget and capital resources, workload, policies and procedures regarding casework, specialized death investigations, records and evidence retention, resources, and operations. The 2023 CMEC will be the third administration of the survey since 2004. To provide more comprehensive statistics on the nation's medicolegal death investigations outside of the traditional MEC offices, the 2023 CMEC will also include the approximately 700 justices of the peace in Texas that make cause and manner of death determinations but were out of scope for the 2004 and 2018 CMECs. The 2023 CMEC survey was assessed by a panel of practitioners and subject matter experts and revised to ensure content is up-to-date and relevant to the medicolegal death investigation system today. The survey has also been revised to improve clarity and ease of answering questions. The 2023 CMEC will extend the national understanding of medicolegal death investigations and complement BJS's data collections involving publicly funded forensic crime laboratories and law enforcement core statistics.

5. *Obligation to Respond:* The obligation to respond is voluntary.

6. *Total Estimated Number of Respondents:* A projected 3,000 respondents (including 2,300 MEC offices and 700 justices of the peace in Texas) will complete form CMEC–1. In addition, an estimated 1,500 respondents will be contacted for data quality follow-up at 15 minutes (.25 hours) per respondent.

7. *Estimated Time per Respondent:* CMEC–1 will take an average of 90 minutes (1.5 hours) for each of the 3,000 respondents to complete. In addition, an estimated 1,500 respondents will be contacted for data quality follow-up at 15 minutes (.25 hours) per respondent.

8. *Frequency:* Each respondent will complete the CMEC–1 once.

9. *Total Estimated Annual Time Burden:* The total burden hours for this collection is 4,875.

10. *Total Estimated Annual Other Costs Burden:* $1,296,618.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Survey	3,000	1	3,000	90 min (1.5 hrs.)	4,500
Data Quality Follow-Up	1,500	1	1,500	15 min (.25 hrs.)	375
Unduplicated Totals	3,000		3,000		4,875

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: July 26, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–16903 Filed 7–31–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Alien Claims Activities Report

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, ''Alien Claims Activities Report.'' 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 September 30, 2024.

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 Jordan Penton by telephone at 972–850–4624 (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 to use 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, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Ave. NW, Washington, DC 20210; by email: *OUI-PRA@dol.gov;* or by fax: 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Rhonda Cowie by telephone at 202–693–3821 (this is not a toll-free number) or by email at *OUI-PRA@dol.gov.*

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.

Section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (also referred to as the Welfare Reform Act of 1996) (Pub. L. 104–193), requires states to verify through the U.S. Citizenship and Immigration Service (USCIS) the legal work authorization status of all aliens applying for benefits under certain Federally assisted and Federally funded programs unless their participation is waived. The USCIS verification system, commonly called the Systematic Alien Verification for Entitlement (SAVE) integrity control, is currently available to, and being utilized by, all states. To comply with its responsibilities under the Social Security Act (SSA), DOL must gather information from state agencies concerning alien claimant activities. The Alien Claims Activities Report is the source available for collecting this information. The following section explains DOL's responsibilities under the SSA and the necessity for approval of the attached Alien Claims Activities Report.

The ETA 9016 report allows DOL to determine the number of aliens filing for unemployment insurance (UI), the number of benefit issues detected, and the numbers of denials resulting from use of the USCIS SAVE system. From these data, DOL can determine the extent to which state agencies use the system, and the overall effectiveness and cost efficiency of the USCIS SAVE verification system. SSA section 1137(d) and (e) authorize 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 No. 1205–0268.

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 Change.

Title of Collection: Alien Claims Activities Report.

Form: ETA 9016.

OMB Control Number: OMB 1205–0268.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 212.

Estimated Average Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 212 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–16912 Filed 7–31–24; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 3, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0014 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0014.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Mine Act allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Petition Docket Number: M–2024–006–C.

Petitioner: Canyon Fuel Company, LLC, HC 35, Box 380, Helper, UT 84526.

Mine: Skyline Mine #3, MSHA ID No. 42–01566, located in Carbon County, Utah.

Regulation Affected: 30 CFR 75.350, *Belt air course ventilation.*

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.350(a), to utilize a portion of the conveyor entry for a return air course to allow for sealing of a worked-out area. In support of the petition for modification, the petitioner submitted a mine map of the affected area along with a diagram of the affected portion of the belt line.

The petitioner states that:

(a) It is prudent mining practice to promptly seal worked-out areas. The petitioner must utilize a portion of the conveyor entry for a return air course to allow for sealing of a worked-out area.

(b) Utilizing a portion of the 12 Tailgate beltline (*i.e.,* the 12 Right Tailgate) as a return air course will allow the operator to proceed with a plan to seal District 1 of the mine.

(c) The mine currently operates under Petition M–2000–040–C and the operator intends to use similar methods.

(d) This petition is needed until the 1 Left Longwall mining is projected to conclude in the 4th quarter of 2024, after which the petition will no longer be required.

The petitioner proposes the following alternative method:

(a) An atmospheric monitoring system (AMS) shall be installed in the primary escapeway entry and belt. The portion of the belt line to be utilized for return does not contain belt drives or take-up components. No non-permissible belt equipment shall be operated in the portion of the belt entry that will be used for a return. The AMS system shall be as follows:

(1) Sensors shall be installed at the mouth of the section in the intake escapeway entry, at the beginning of the working section, and at intervals not to exceed 1,000 feet along the intake escapeway entry between such locations.

(2) Sensors shall be installed at the mouth of the section in the belt entry, at a location between 50 feet and 100 feet inby the section belt drive if the air is traveling to the face, or outby if the air is traveling away from the face in the belt entry and at intervals not to exceed 1,000 feet along the belt conveyor entry. A monitoring device shall be located between 25 feet and 50 feet inby the tailpiece if the air is traveling to the face, or between 50 feet and 100 feet outby the tailpiece if the air is traveling away from the face. The tailpiece and the sensor shall be on the same split of air.

(3) Sensors shall be installed near the center in the upper third of the belt entry in a location that will not expose personnel working on the system to unsafe situations. Sensors installed in the haulage entry shall be located in areas where they are not exposed to

damage from mobile equipment. Sensors shall not be located in intersections, abnormally high areas, or other areas where air flow patterns do not permit products of combustion to be carried to the sensors.

(4) Where the return air is directed out of the belt conveyor entry, a sensor shall be installed in the belt entry 25 feet inby that location and a sensor shall be installed between where the return air is directed out of the belt entry and the ventilation box check device is located.

(5) A sensor shall be installed in the mainline conveyor entry between 50 and 100 feet downwind of the location where the 12 Tailgate section belt conveyor discharges onto the mainline belt.

(b) The air velocity requirements in the conveyor entry shall be as follows:

(1) The air in the belt entry shall have a velocity of at least 50 feet per minute and have a perceptible movement in the designated direction.

(2) The velocity measurements shall be taken at locations in the entry that are representative of the cross-sectional areas found throughout the entry and not in areas where the entry is abnormally high or low (*e.g.* belt drives or under overcasts, respectively).

(c) Carbon monoxide ambient, alert and alarm levels shall be as follows:

(1) The ambient carbon monoxide level shall be 5 parts per million (ppm). The alert and alarm levels for the belt entry and intake entry shall be determined by adding the ambient level to the levels established in Table 1.

(2) The AMS shall also be activated and the alarm shall signal if the total concentration of carbon monoxide measured by any sensor exceeds 50 ppm.

TABLE 1—CO ALERT AND ALARM LEVELS

Quantity (cfm)		Concentration setting above ambient (ppm)	
From	To	Alert	Alarm
5,000	50,000	5	10
50,000	200,000	4	8

(d) Audible and visual alarm devices currently installed for compliance with Petition M–2000–040–C shall be utilized. Alarm devices shall give visual and audible signals that can be seen and heard at all times in the working section(s) and at a location on the surface of the mine where a responsible person(s) is on duty at all times when miners are underground. Alert devices shall give visual or audible signals that can be seen or heard at all times at the surface location whenever miners are underground. When audible signals are used for both alert and alarm, the signals shall be distinguishable from each other.

(1) The AMS shall be designed to include a time delay period for carbon monoxide alert and alarm signals not to exceed 60 seconds. When a sensor response remains within the alert or alarm range for more than the predetermined length of time delay, visual and/or audible signals will be given at those levels.

(2) When the AMS gives any visual or audible alert signal, all persons in the same split of air shall immediately be notified and appropriate action shall be taken to determine the cause of the actuation. When the AMS gives any audible alarm signal, all persons in the same split(s) of air shall immediately be withdrawn to a safe location outby the sensor(s) activating the alarm, unless the cause is known not to be a hazard to the miners. When the AMS gives any audible alarm at shift change, no one shall be permitted to enter the mine except qualified persons designated to investigate the source of the alarm. If miners are in route into the mine, they shall be held at, or be withdrawn to, a safe location outby the sensor(s) activating the alarm. When a determination is made as to the source of the alarm, and that the mine is safe to enter, the miners shall be permitted underground.

(3) The mine evacuation plan required by 30 CFR 75.1101–23(a) shall specify the action to be taken to determine the cause of the alert and alarm signals, the location(s) for withdrawal of miners for each alarm signal, the steps to be taken after the cause of an alert signal is determined, and the procedures to be followed if an alarm signal is activated. A record of each alert and alarm signal given and the action taken shall be maintained at the mine for a period of 1 year and made available to all interested persons.

(e) When miners are underground, a responsible person shall be on duty at all times at a surface location at the mine to see the visual alert and hear the audible alarm signals of the AMS when the carbon monoxide reaches the levels established in Table 1. This person shall have two-way communications with all working sections. When the established alarm signal levels are reached, the person shall notify miners who are working inby the affected sensor. The responsible person shall be trained in the operation of the AMS and in the proper procedures to follow in the event of an emergency or malfunction and, in that event, shall take appropriate action immediately.

(f) The AMS shall be examined visually at least once each coal-producing shift and tested for functional operation at intervals not exceeding 7 days to ensure it is functioning properly and that required maintenance is being performed. The AMS shall be calibrated with known concentrations of carbon monoxide and air mixtures at intervals not exceeding 30 calendar days. A record of all weekly inspections, monthly calibrations, and all maintenance shall be maintained on the surface and made available to all interested persons. The inspection record shall show the time and date of each weekly inspection, calibration, and all maintenance performed on the system.

(g) The AMS shall remain operative for the purpose of giving warning of a fire for a minimum of 4 hours after the source of power to the belt is removed except when power is removed during a fan stoppage or when the belt haulageway is examined as provided in 30 CFR 75.1103–4(e)(l) and (e)(2).

(h) The AMS shall be capable of identifying any activated sensor. A map or schematic identifying each belt flight and the details of the monitoring system shall be posted at the mine.

(i) If at any time the AMS has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the miners in the working section affected are notified of the situation and the affected portion of the belt or intake entry is continuously patrolled and monitored for carbon monoxide and methane in the following manner until the affected AMS is returned to normal operation.

(1) The patrolling and monitoring shall be conducted by a qualified person or persons.

(2) The qualified person(s) performing atmospheric monitoring for carbon monoxide and methane or both shall at all times be equipped with a two-way communication device enabling the person(s) performing the monitoring to communicate with the surface. Mine phones spaced a maximum of 1,000 feet may be used for the communication device. When used for this purpose, the mine phone location shall be conspicuously identified.

(3) If one sensor becomes inoperative, a qualified person shall monitor at the location.

(4) If two or more adjacent sensors become inoperative, a qualified person or persons shall patrol and monitor the area affected at least once each hour.

(5) If the complete system becomes inoperative, a sufficient number of qualified persons shall patrol and

monitor the affected entries of the mine so that the affected entries will be traveled once each hour in their entirety.

(6) Each of these qualified persons shall be provided with a hand-held carbon monoxide detector and a hand-held methane detector. A carbon monoxide detector and a methane detector shall also be available for use on each working section in the event the AMS is deenergized or fails.

(7) These procedures are applicable only for a short period of time and are to be determined by the reasonable amount of time required to repair or replace the equipment causing the malfunction. The mine operator shall begin corrective action immediately and continue until the defective equipment causing the malfunction is replaced or repaired. The responsible person on the surface shall immediately establish two-way communications with the working section(s) and notify them of the particular malfunction(s) or problem(s).

(8) Monitoring with hand-held detectors shall not be used in lieu of installation and use of the fire detection and methane monitoring systems.

(9) Time delays shall not be applied to measurements made with handheld detectors. Since hand-held detector measurements will include carbon monoxide from diesel-powered equipment, the alert and alarm levels for carbon monoxide when qualified persons are patrolling or monitoring with hand-held detectors shall be 15 ppm and 20 ppm, respectively. These levels shall be incorporated and included as a part of the mine ventilation plan required by 30 CFR 75.370.

(j) The details of the fire detection system and the methane monitoring system, including the type of monitor and specific sensor location on the mine map, shall be included as a part of the mine ventilation plan as required by 30 CFR 75.370.

(k) The concentration of respirable dust in the intake air coursed through a belt conveyor haulageway shall not exceed 1.0 mg/m^3. Compliance with this requirement shall be determined by establishing a designated area (DA) sampling location within 15 feet outby the working section belt tailpiece or just outby any air split point introduced into the belt entry and by sampling in accordance with 30 CFR 70.208.

(l) Mantrip cars or personnel carriers or other transportation equipment shall be maintained on or near the working section and be of sufficient capacity to transport all persons who may be in the area and shall be located within 300 feet of the section loading point.

(m) Fire doors designed to quickly isolate the working section shall be constructed in the 12 Right Tailgate near the head of the section for potential use in emergency situations. The fire doors will remain operable while mining inby the 1 Left Tailgate Section. A plan for the emergency closing of these firedoors, notification of personnel, and de-energization of electric power inby the doors shall be included in the approved mine ventilation plan.

(n) Two separate lines or systems for voice communication shall be maintained in the 1 Left Tailgate mining section. Phones shall be installed every 1,000 feet within one crosscut of the location of the diesel discriminating sensor in the belt and intake entries. The two systems shall not be routed through the same entry.

(o) At least one self-contained self-rescuer shall be available for each person in the 1 Left Tailgate section at all times and shall be carried into the section and carried on the section, or stored on the section, while advancing development.

(p) In addition to the requirements of 30 CFR 75.1100–2 (b), firehose outlets with valves every 300 feet shall be installed along the intake entry. At least 500 feet of firehose with fittings and nozzles suitable for connection with the outlets shall be stored at each strategic location along the intake entry. The locations shall be specified in the firefighting and evacuation plan.

(q) Compressor stations and unattended portable compressors shall not be located in the 1 Left Tailgate section.

(r) A methane monitoring system utilizing methane sensors shall be incorporated into the AMS and be installed to monitor the air in the 12 Right Tailgate Belt Entry.

(1) The sensors shall be located so that the belt air is monitored near the mouth of the development, near the tailpiece of the belt conveyor, and at or near any secondary belt drive unit installed in the belt haulage entry.

(2) The methane monitoring system shall be capable of providing both audible and visual signals on both the working section and at a manned location on the surface of the mine where personnel will be on duty at all times when miners are underground in a two-entry section or when a conveyor belt is operating in a two-entry section. A trained person at the surface shall have two-way communication with all working sections. The system shall initiate alarm signals when the methane level is 1.0 volume per centum. The methane monitoring system shall be designed and installed to deenergize the belt conveyor drive units when the methane level is 1.0 volume per centum. Upon notification of the alarm, miners shall deenergize all other equipment located on the section.

(3) The methane monitoring system shall be visually examined at least once every working shift to ensure proper functioning. The system shall be inspected by a person qualified for such work at intervals not exceeding 7 days. The qualified person shall ensure that the devices are operating properly and that the required maintenance, as recommended by the manufacturer, is performed. The monitoring devices shall be calibrated with known quantities of methane-air mixtures at intervals not exceeding 31 calendar days. An inspection record shall be maintained on the surface and made available to all interested persons. The inspection record shall show the date and time of each weekly inspection and calibration of the monitor and all maintenance performed, whether at the time of the weekly inspection or otherwise.

(s) Implementation and training requirements:

(1) Prior to implementing the modification, an inspection shall be conducted by MSHA to ensure that the terms and conditions of this petition have been complied with and that the miners have been trained in proper evacuation procedures, including instructions and drills in evacuation and instructions in precautions to be taken for escape through smoke.

(2) Within 60 days after the Proposed Decision and Order (PDO) is granted by MSHA, the petitioner shall submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions shall specify initial and refresher training regarding the conditions specified by the PDO. This shall include training on the fire suppression systems used on diesel equipment used in the two-entry system. Miners working around the hydraulic pumping station shall be trained in the requirements of the PDO when the hydraulic pumping station for the longwall supports is located in the two-entry system.

(3) The terms and conditions of this petition will not apply during the time period from completion of the development mining of the 1 Left Tailgate and Headgate until the beginning of the longwall equipment set-up activities, provided the conveyor belt in the two-entry panel is not energized. During this time period all other mandatory standards will apply.

(t) Requirements Applicable to Two-Entry Development, Longwall Set-up

and Recovery, and Retreat Mining Systems When Diesel-Powered Equipment is Operated on a Two-Entry System.

(1) Administrative controls shall be developed establishing procedures for planning and communication of activities which are known to result in elevated carbon monoxide levels which do not present a hazard to miners working inby. All persons working in the two-entry longwall panel shall be trained as to the requirements of these administrative controls. In the case of diesel equipment operators, the training shall include diesel discriminating sensor locations to minimize false alarms. Diesel equipment operators shall be instructed not to idle machines near sensors. Administrative controls shall be used to minimize the number and type of pieces of diesel equipment in the two-entry system, to notify a responsible person on the working section when any diesel equipment is operating in the two-entry system and when welding operations are performed to avoid false alert and alarm signals. These administrative controls shall be incorporated into the mine ventilation plan.

(2) All light duty and heavy-duty diesel-powered equipment not approved and maintained as permissible under 30 CFR part 36 may operate on any two-entry system, except where permissible equipment is required, as long as the equipment includes:

(i) An automatic and manually activated fire suppression system meeting the requirements of 30 CFR 75.1911. The manual fire suppression system shall be capable of being activated from inside and outside the machine's cab. The manual actuator located outside the cab shall be on the side of the machine opposite the engine. The systems shall be maintained in operating condition.

(ii) An automatic engine shut down/fuel shut off system, maintained in operating condition, which is tied into the activation of the fire suppression system.

(iii) An automatic closing, heat-activated shut off valve, maintained in operating condition, on diesel fuel lines either between the fuel injection pump and fuel tank, if the fuel lines are constructed of steel, or connected as close as practical to the fuel tank using steel fittings if fuel lines are constructed of material other than steel.

(iv) A means, maintained in operating condition, to prevent the spray from ruptured diesel fuel, hydraulic oil, and lubricating oil lines from being ignited by contact with engine exhaust system component surfaces such as shielding, conduit, or non-absorbent insulating materials.

(v) Diesel-powered equipment classified as ''heavy-duty'' under 30 CFR 75.1908(a), must include a means, maintained in operating condition, to maintain the surface temperature of the exhaust system of diesel equipment below 302 degrees Fahrenheit. Diesel road graders are considered heavy-duty equipment.

(vi) Diesel-powered rock dust machines and diesel-powered generators, both light duty machines, which are not approved and maintained as permissible under Part 36, may be used in the two-entry system, except where permissible equipment is required, even if they do not meet the requirements provided that:

(A) No miners are located in the work area.

(B) No miners are located in the adjacent parallel entry at any location when either the rock dust machine or generator is operating or located in the two-entry section.

(3) Diesel fuel shall not be stored in the two-entry system. Diesel-powered equipment not approved and maintained under Part 36 shall not be refueled in the two-entry system.

(4) Diesel equipment shall not be used for face haulage equipment on the working section, except that diesels may be used on the working section for cleanup, setup, and recovery, or similar non-coal haulage purposes.

(5) If non-Part 36 diesel-powered equipment needs to be ''jump started'' due to a dead battery in any two-entry system, a methane check by a qualified person using an MSHA approved detector shall be made prior to attaching the ''jumper'' cables. The equipment shall not be ''jump'' started if air contains 1.0 volume per centum or more of methane.

(6) A diesel equipment maintenance program shall be adopted and complied with by the operator. The program shall include the examinations and tests specified in the manufacturers' maintenance recommendations as it pertains to diesel carbon monoxide emissions. A record of these examinations and tests shall be maintained on the surface and be made available to all interested persons.

Skyline Mine #3 has no designated miner's representative.

The petitioner asserts that the alternative method proposed in the petition will at all times guarantee no less than the same measure of protection afforded by 30 CFR 75.350(a).

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–16913 Filed 7–31–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 3, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0015 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2024–0015.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*.
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

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SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and Title 30 of the Code of Federal Regulations

(CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Mine Act allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–007–C.

Petitioner: Tunnel Ridge, LLC, 184 Schoolhouse Lane, Valley Grove, WV 26060.

Mine: Tunnel Ridge Mine, MSHA ID No. 46–08864, located in Ohio County, West Virginia.

Regulation Affected: 30 CFR 75.1700, *Oil and gas wells*.

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1700, to utilize alternative plugging methods to establish and maintain barriers around its Surface Directionally Drilled (SDD) wells.

The petitioner states that:

(a) The Tunnel Ridge Mine's current mine plan has only one known Coal Bed Methane (CBM) well within the current mine plan, the NV99 well (API No. 37–125–23340). This well has never been used for the production of methane.

(b) The unmapped laterals of the NV99 well were inadvertently intersected with the 1 Left Gate Continuous Miner (CM) section. The NV99 well was plugged from the surface, including laterals, with flowable cement. During plugging operations, the production hole, access hole, and laterals of the NV99 CBM well were squeeze cemented with 158% of the calculated total volume.

(c) The 1 Left Gate CM section successfully mined through 3 of the 4 legs of the NV99 well. The mine-throughs of the lateral legs were successfully accomplished by water infusing the well bores.

(d) The NV99 CBM well access hole is now scheduled to have development mining occur within 150 feet due to the 2 Left Gate CM section during July 2024.

(e) The lateral legs of the well are scheduled to be mined through with the 2 Left Longwall (LW) in June 2025.

The petitioner proposes the following alternative method:

(a) District Manager approval required.

(1) A minimum working barrier of 300-feet diameter shall be maintained around all SDD wells until approval to proceed with mining has been obtained from the District Manager.

(2) The working barrier extends around all vertical and horizontal branches drilled in the coal seam and also extends around all vertical and horizontal branches within overlying coal seams subject to caving or subsidence from the coal seam being mined when methane leakage through the subsidence zone is possible.

(3) The District Manager shall choose to approve each branch intersection, each well, or a group of wells as applicable to the conditions.

(4) The District Manager may require a certified review of the proposed methods to prepare the SDD wells for intersection by a professional engineer in order to assess the applicability of the proposed system(s) to the mine-specific conditions.

(b) Mandatory procedures for preparing, plugging, and replugging SDD wells.

(1) Mandatory computations and administrative procedures prior to plugging or replugging.

(i) Probable Error of Location—Directional drilling systems rely on sophisticated angular measurement systems and computer models to calculate the estimated location of the well bore. This estimated hole location is subject to cumulative measurement errors so that the distance between actual and estimated location of the well bore increases with the depth of the hole. Modern directional drilling systems are typically accurate within one or two degrees depending on the specific equipment and techniques. The probable error of location is defined by a cone described by the average accuracy of angular measurement around the length of the hole. In addition to the probable error of location, the true hole location is also affected by underground survey errors, surface survey errors, and random survey errors.

(ii) Minimum Working Barrier Around Well—The minimum working barrier around any CBM well or branches of a CBM well in the coal seam is 50 feet plus the probable error of location. The probable error of location is a reasonable separation between the probable location of the well and mining operations. When mining is within the minimum working barrier distance from a CBM well or branch, the mine operator must comply with the Proposed Decision and Order (PDO) granted by MSHA. CBM wells must be prepared in advance for safe intersection and specific procedures must be followed on the mining section. The District Manager may require a greater minimum working barrier around CBM wells where geologic conditions, historical location errors, or other factors warrant a greater barrier.

(iii) Ventilation Plan Requirements—The ventilation plan shall contain a description of all SDD CBM wells drilled in the area to be mined. This description shall include the well numbers, the date drilled, the diameter, the casing information, the coal seams developed, maximum depth of the wells, abandonment pressures, and any other information required by the District Manager. All or part of this information may be listed on the mine ventilation map. The ventilation plan shall include the techniques that the mine operator plans to use to prepare the SDD wells for safe intersection, the specifications, and steps necessary to implement these techniques, and the operational precautions that are required when mining within the minimum working barrier. In addition, the ventilation plan will contain any additional information or provisions related to the SDD wells required by the District Manager.

(iv) Ventilation Map—The Ventilation map shall contain the following information:

(A) The surface location of all CBM wells in the active mining area and any projected mining area;

(B) Identifying information of CBM wells (*i.e.* API hole number or equivalent);

(C) The date that gas production began from the well;

(D) The coal seam intersection of all CBM wells;

(E) The horizontal extents in the coal seam of all CBM wells and branches;

(F) The outline of the probable error of location of all CBM wells; and

(G) The date of mine intersection and the distance between estimated and actual locations for all intersections of the CBM well and branches.

(2) Mandatory procedures for plugging or replugging SDD wells.

(i) The mine operator shall include in the mine ventilation plan one or more of the following methods to prepare SDD wells for safe intersection:

(A) Cement Plug—Cement may be used to fill the entire SDD hole system. Squeeze cementing techniques are

necessary for SDD plugging due to the lack of tubing in the hole. Cement should fill void spaces and eliminate methane leakage along the hole. Once the cement has cured, the SDD system may be intersected multiple times without further hole preparation. Gas cutting occurs if the placement pressure of the cement is less than the methane pressure in the coal seam. Under these conditions, gas will bubble out of the coal seam and into the unset cement creating a pressurized void or series of interconnected pressurized voids. Water cutting occurs when formation water and standing water in the hole invades or displaces unset cement. Standing water shall be bailed out of the hole or driven into the formation with compressed gas to minimize water cutting. The cement pressure must be maintained higher than the formation pressure until the cement sets to minimize both gas and water cutting. The cementing program in the ventilation plan must address both gas and water cutting. Due to the large volume to be cemented and potential problems with cement setting prior to filling the entire SDD system, adequately sized pumping units with back-up capacity must be used. Various additives such as retarders, lightweight extenders, viscosity modifiers, thixotropic modifiers, and fly ash may be used in the cement mix. The volume of cement pumped should exceed the estimated hole volume to ensure the complete filling of all voids. The complete cementing program, including hole dewatering, cement, additives, pressures, pumping times and equipment must be specified in the ventilation plan. The material safety data sheets (MSDS) for all cements, additives and components and any personal protective equipment and techniques to protect workers from the potentially harmful effects of the cement and cement components shall be included in the ventilation plan. Records of cement mixes, cement quantities, pump pressures, and flow rates and times shall be retained for each hole plugged. The District Manager shall require suitable documentation of the cement plugging in order to approve mining within the minimum working barrier around CBM wells.

(B) Polymer Gel—Polymer gels start out as low viscosity, water-based mixtures of organic polymers that are crosslinked using time-delayed activators to form a water-insoluble, high-viscosity gel after being pumped into the SDD system. Although polymer gel systems never solidify, the activated gel should develop sufficient strength to resist gas flow. A gel that is suitable for treating SDD wells for mine intersection will reliably fill the SDD system and prevent gas-filled voids. Any gel chemistry used for plugging SDD wells shall be resistant to bacterial and chemical degradation and remain stable for the duration of mining through the SDD system. Water may dilute the gel mixture to the point where it will not set to the required strength. Water in the holes shall be removed before injecting the gel mixture. Water removal shall be accomplished by conventional bailing and then injecting compressed gas to squeeze the water that accumulates in low spots back into the formation. Gas pressurization shall be continued until the hole is dry. Another potential problem with gels is that dissolved salts in the formation waters may interfere with the cross-linking reactions. Any proposed gel mixtures shall be tested with actual formation waters. Equipment to mix and pump gels shall have adequate capacity to fill the hole before the gel sets. Back-up units shall be available in case something breaks while pumping. The volume of gel pumped shall exceed the estimated hole volume to ensure the complete filling of all voids and allow for gel to infiltrate the joints in the coal seam surrounding the hole. Gel injection and setting pressures shall be specified in the ventilation plan. To reduce the potential for an inundation of gel, the final level of gel should be close to the level of the coal seam and the remainder of the hole shall remain open to the atmosphere until mining in the vicinity of the SDD system is completed. Packers may be used to isolate portions of the SDD system. The complete polymer gel program, including advance testing of the gel with formation water, dewatering systems, gel specifications, gel quantities, gel placement, pressures, and pumping equipment shall be specified in the ventilation plan. The MSDS for all gel components and any personal protective equipment and techniques to protect workers from the potentially harmful effects of the gel and gel components shall be included in the ventilation plan. A record of the calculated hole volume, gel quantities, gel formulation, pump pressures, and flow rates and times should be retained for each hole that is treated with gel. Other gel chemistries other than organic polymers shall be included in the ventilation plan with appropriate methods, parameters, and safety precautions.

(C) Bentonite Gel—High-pressure injection of bentonite gel into the SDD system will infiltrate the cleat and butt joints of the coal seam near the well bore and effectively seal the conduits against the flow of methane. Bentonite gel is a thixotropic fluid that sets when it stops moving. Bentonite gel has a significantly lower setting viscosity than polymer gel. The lower strength bentonite gel must penetrate the fractures and jointing in the coal seam in order to be effective in reducing formation permeability around the hole. The use of bentonite gel is restricted to depleted CBM applications that have low abandonment pressures and limited recharge potential. In general, these applications will be mature CBM fields with long production histories. A slug of water shall be injected prior to the bentonite gel in order to minimize moisture-loss bridging near the well bore. The volume of gel pumped should exceed the estimated hole volume to ensure that the gel infiltrates the joints in the coal seam for several feet surrounding the hole. Due to the large gel volume and potential problems with premature thixotropic setting, adequately sized pumping units with back-up capacity are required. Additives to the gel may be required to modify viscosity, reduce filtrates, reduce surface tension, and promote sealing of the cracks and joints around the hole. To reduce the potential for an inundation of bentonite gel, the final level of gel should be approximately the elevation of the coal seam and the remainder of the hole should remain open to the atmosphere until mining in the vicinity of the SDD system is completed. The complete bentonite gel program, including formation infiltration and permeability reduction data, hole pretreatment, gel specifications, additives, gel quantities flow rates, injection pressures and infiltration times, must be specified in the ventilation plan. The ventilation plan shall list the equipment used to prepare and pump the gel. The MSDS for all gel components and any personal protective equipment and techniques to protect workers from the potentially harmful effects of the gel and additives shall be included in the ventilation plan. A record of hole preparation, gel quantities, gel formulation, pump pressures, and flow rates and times should be retained for each hole that is treated with bentonite gel.

(D) Active Pressure Management and Water Infusion—Reducing the pressure in the hole to less than atmospheric pressure by operating a vacuum blower connected to the wellhead may facilitate safe intersection of the hole by a coal mine. The negative pressure in the hole shall limit the quantity of methane

released into the higher pressure mine atmosphere. If the mine intersection is near the end of a horizontal branch of the SDD system, air will flow from the mine into the upstream side of the hole and be exhausted through the blower on the surface. On the downstream side of the intersection, if the open hole length is short, the methane emitted from this side of the hole may be diluted to safe levels with ventilation air. Conversely, safely intersecting this system near the bottom of the vertical hole may not be possible because the methane emissions from the multiple downstream branches may be too great to dilute with ventilation air. The methane emission rate is directly proportional to the length of the open hole. Successful application of vacuum systems may be limited by caving of the hole or water collected in dips in the SDD system. Older, more depleted wells that have lower methane emission rates are more amenable to this technique. The remaining methane content and the formation permeability shall be addressed in the ventilation plan. Packers may be used to reduce methane inflow into the coal mine after intersection. All packers on the downstream side of the hole must be equipped with a center pipe so that the inby methane pressure may be measured or so that water may be injected. Subsequent intersections shall not take place if pressure in a packer-sealed hole is excessive. Alternatively, methane produced by the downstream hole may be piped to an in-mine degas system to safely transport the methane out of the mine or may be piped to the return air course for dilution. In-mine methane piping should be protected as stipulated in ''Piping Methane in Underground Coal Mines,'' MSHA IR 1094, (1978). Protected methane diffusion zones may be established in return air courses if needed. Detailed sketches and safety precautions for methane collection, piping and diffusion systems must be included in the ventilation plan. Water infusion prior to intersecting the well will temporarily limit methane flow. Water infusion may also help control coal dust levels during mining. High water infusion pressures may be obtained prior to the initial intersection by the hydraulic head resulting from the hole depth or by pumping. Water infusion pressures for subsequent intersections are limited by leakage around in-mine packers and limitations of the mine water distribution system. If water is infused prior to the initial intersection, the water level in the hole must be lowered to the coal seam elevation before the intersection. The complete pressure management strategy including negative pressure application, wellhead equipment, and use of packers, in-mine piping, methane dilution, and water infusion must be specified in the ventilation plan. Procedures for controlling methane in the downstream hole must be specified in the ventilation plan. The remaining methane content and formation permeability shall be addressed in the ventilation plan. The potential for the coal seam to cave into the well shall be addressed in the ventilation plan. Dewatering methods shall be included in the ventilation plan. A record of the negative pressures applied to the system, methane liberation, use of packers and any water infusion pressures and application time shall be retained for each intersection.

(E) Remedial work—If problems are encountered in preparing the holes for safe intersection, then remedial measures must be taken. The District Manager shall approve remedial work in the ventilation plan on a case-by-case basis.

(ii) The methods approved in the ventilation plan must be completed on each SDD well before mining encroaches on the minimum working barrier around the well or branch of the well in the coal seam being mined. If methane leakage through subsidence cracks is a problem when retreat mining, the minimum working barrier must be maintained around wells and branches in overlying coal seams, or the wells and branches must be prepared for safe intersection.

(c) Mandatory procedures that shall be followed after approval has been granted by the District Manager.

(1) The mine operator, the District Manager, the miners' representative, or the State may request a conference prior to any intersection or after any intersection to discuss issues or concerns. Upon receipt of any such request, the District Manager shall schedule a conference. The party requesting the conference shall notify all other parties listed above within a reasonable time prior to the conference to provide opportunity for participation.

(2) The mine operator must notify the District Manager, the State and the miners' representative at least 48 hours prior to the intended intersection of any CBM well.

(3) The initial intersection of a well or branch typically indicates if the well preparation is sufficient to prevent the inundation of methane.

(4) When mining advances within the minimum barrier distance of the well or branches of the well, the entries that will intersect the well or branches must be posted with a readily visible marking. For longwalls, both the head and tailgate entries must be marked. Marks must be advanced to within 100 feet of the working face as mining progresses. Marks shall be removed after well or branches are intersected in each entry or after mining has exited the minimum barrier distance of the well.

(5) Entries that intersect vertical segments of a well shall be marked with drivage sights in the last open crosscut when mining is within 100 feet of the well. When a vertical segment of a well will be intersected by a longwall, drivage sights shall be installed on 10-foot centers starting 50 feet in advance of the anticipated intersection. Drivage sights shall be installed in both the headgate and tailgate entries of the longwall.

(6) The operator shall ensure that fire-fighting equipment, including fire extinguishers, rock dust, and a sufficient fire hose to reach the working face area of the mine-through (when either the conventional or the continuous mining method is used) is available and operable during all well mine throughs. The fire hose shall be located in the last open crosscut of the entry or room. The operator shall maintain the water line to the belt conveyor tailpiece along with a sufficient amount of fire hose to reach the farthest point of penetration on the section. When the longwall mining method is used, a hose to the longwall water supply is sufficient. All fire hoses shall be connected and ready for use, but do not have to be charged with water during the cut-through.

(7) The operator shall ensure that sufficient supplies of roof support and ventilation materials are available at the working section. In addition, emergency plugs, packers, and setting tools to seal both sides of the well or branch shall be available in the immediate area of the cut-through.

(8) When mining advances within the minimum working barrier distance from the well or branch of the well, the operator shall service all equipment and check for permissibility at least once daily. Daily permissibility examinations must continue until the well or branch is intersected or until mining exits the minimum working barrier around the well or branch.

(9) When mining is in progress, the operator shall perform tests for methane with a handheld methane detector at least every 10 minutes from the time that mining with the continuous mining machine or longwall face is within the minimum working barrier around the well or branch. During the cutting process, no individual shall be allowed on the return side until the mine-

through has been completed and the area has been examined and declared safe. The shearer must be idle when any miners are inby the tail drum.

(10) When mining advances within the minimum working barrier distance from the well or branch of the well, the operator shall calibrate the methane monitor(s) on the longwall, continuous mining machine, or cutting machine and loading machine at least once daily. Daily methane monitor calibration must continue until the well or branch is intersected or until mining exits the minimum working barrier around the well or branch.

(11) When using continuous or conventional mining methods, the working place shall be free from accumulations of coal dust and coal spillages, and rock dust shall be placed on the roof, rib, and floor within 20 feet of the face when mining through the well or branch. On longwall sections, rock dust shall be applied on the roof, rib, and floor up to both the headgate and tailgate pillared area.

(12) Immediately after the well or branch is intersected, the operator shall deenergize all equipment, and the certified person shall thoroughly examine and determine the working place safe before mining is resumed.

(13) After a well or branch has been intersected and the working place determined safe, mining shall continue inby the well a sufficient distance to permit adequate ventilation around the area of the well or branch.

(14) No open flame shall be permitted in the area until adequate ventilation has been established around the well bore or branch. Any casing, tubing or stuck tools shall be removed using the methods approved in the ventilation plan.

(15) No person shall be permitted in the area of the mine-through operation inby the last open crosscut during active mining except those engaged in the operation, including company personnel, personnel from MSHA, and personnel from the appropriate State agency.

(16) The operator shall warn all personnel in the mine of the planned intersection of the well or branch prior to their going underground if the planned intersection is to occur during their shift. This warning shall be repeated for all shifts until the well or branch has been intersected.

(17) The mine-through operation shall be under the direct supervision of a certified person. Instructions concerning the mine-through operation shall be issued only by the certified person in charge.

(18) All miners shall be in known locations and in constant two-way communications with the responsible person when active mining occurs within the minimum working barrier of the well or branch.

(19) The responsible person is responsible for well intersection emergencies. The well intersection procedures must be reviewed by the responsible person prior to any planned intersection.

(20) A copy of the PDO granted by MSHA shall be maintained at the mine and be available to the miners.

(21) The provisions of the PDO granted by MSHA does not impair the authority of representatives of MSHA to interrupt or halt the mine-through operation and to issue a withdrawal order when they deem it necessary for the safety of miners. MSHA may order an interruption or cessation of the mine-through operation and/or a withdrawal of personnel by issuing either a verbal or a written order to that effect to a representative of the operator. Operations in the affected area of the mine may not resume until a representative of MSHA permits resumption of mine-through operations. The mine operator and miners shall comply with verbal or written MSHA orders immediately. All verbal orders shall be committed to writing within a reasonable time as conditions permit.

(22) For subsequent intersections of branches of a well, appropriate procedures to protect the miners shall be specified in the ventilation plan.

(d) Mandatory procedures that shall be followed after SDD intersections.

(1) All intersections with SDD wells and branches that are in intake air courses shall be examined as part of the pre-shift examinations.

(2) All other intersections with SDD wells and branches shall be examined as part of the weekly examinations.

(e) Other requirements.

(1) Within 30 days after the PDO is granted by MSHA, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions shall include initial and refresher training regarding compliance with the terms and conditions stated in the PDO granted by MSHA. The operator shall provide all miners involved in the mine-through of a well or branch with training prior to mining within the minimum working barrier of the next well or branch intended to be mined through.

(2) Within 30 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved mine emergency evacuation and firefighting program of instruction. The operator shall revise the program to include the hazards and evacuation procedures to be used for well intersections. All underground miners shall be trained in this revised program within 30 days of approval.

Tunnel Ridge Mine has no designated miner's representative.

In support of the proposed alternative methos, the Petitioner submitted a certified overview map of Tunnel Ridge Mine with all known CBM wells with horizontal laterals, and the plugging affidavit for the NV99 CBM well.

The Petitioner asserts that the alternative method proposed in the Petition will at all times guarantee no less than the same measure of protection afforded by 30 CFR 75.350(a).

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–16915 Filed 7–31–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 3, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0017 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0017.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452. *Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal

business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Mine Act allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–008–C.

Petitioner: Fossil Rock Resources, LLC, 5125 N Cottonwood Road, Orangeville, UT 84537.

Mine: Fossil Rock Mine, MSHA ID No. 42–01211, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.1909(b)(6).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1909(b)(6), to utilize alternative methods of compliance to permit the use of a road grader without front brakes.

The petitioner states that:

(a) Fossil Rock Mine may use the following model of grader or a similar model: Getman, Model 1504–C.

(b) The Getman graders were the subject of a previously granted petition for modification at the Skyline Mine No. 3 and Dugout Canyon Mine (M–1999–073–C).

(c) The Getman graders will be available for inspection at Skyline Mine No. 3.

(d) Service brakes on each wheel of the vehicle are designed such that failure of any single component, except the brake actuation pedal or other similar actuation device, must not result in a complete loss of service braking capability.

(e) The mine uses rubber-tired diesel equipment to transport personnel and supplies down the slope and into the mine. The Getman graders will be used to maintain the roadways traveled by the rubber-tired equipment. The coal seam is relatively flat in the areas that have been mined. At the time of the investigation by MSHA, Fossil Rock will provide a map which shows elevations to the extent possible.

(f) The Getman graders have a dual brake system on the four rear wheels and are designed to prevent loss of braking due to a single component failure. Each of the brake systems features an accumulator pressure gauge and a low-pressure warning light. The graders also have a spring applied, hydraulic release wet disc park and supplemental brake, transmission neutralizer, and test button for park brake testing. The independent braking systems are designed to operate even when oil, air, electrical or transmission pressure fails. These systems provide independent braking systems in lieu of brakes on the front wheels of the grader.

The petitioner proposes the following alternative method:

(a) Road grader operators shall limit the speed of the diesel graders to 10 miles per hour (mph) in either direction. This shall be accomplished by the following:

(1) Permanently blocking out the gear(s) or any gear ratio(s) that provide higher speeds. The device shall limit the vehicle speed in both forward and reverse; and

(2) Using transmission(s) and differential(s) geared in accordance with the equipment manufacturer which limits the maximum speed to 10 mph.

(b) Road grader operators will be trained on the provisions of this Petition for Modification and this training will be documented on a 5000–23 form. Training will include, but not be limited to the following:

(1) The braking limitations of the road grader.

(2) The speed of the road grader is limited to 10 mph or less.

(3) The fourth gear is not available.

(4) As the angle of a road or slope increases, speed should be reduced by operating at a lower gear.

(5) As an alternate means to control the speed of the road grader, the moldboard can be lowered to the mine floor.

(6) Within 60 days after the Proposed Decision and Order is granted by MSHA, the Petitioner shall submit proposed revisions for its approved 30 CFR part 48 training plan. These proposed revisions shall specify initial and refresher training regarding the conditions specified in the Petition.

Fossil Rock Mine has no designated miner's representative.

The Petitioner asserts that the alternative method proposed in the Petition will at all times guarantee no less than the same measure of protection afforded by 30 CFR 75.1909(b)(6).

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–16914 Filed 7–31–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America, 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 TUV SUD America, Inc. (TUVAM) as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on August 1, 2024.

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) 693–1999; 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) 693–1911; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition for TUV SUD America Inc. (TUVAM). TUVAM's expansion covers the addition of five test standards 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 its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its 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 an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 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 its 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 TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: *https://www.osha.gov/nationally-recognized-testing-laboratory-program.*

TUVAM submitted an application, dated September 30, 2021 (OSHA–2007–0043–0057), to expand their recognition to include five additional test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing TUVAM's expansion application in the **Federal Register** on April 17, 2024 (89 FR 27456). The agency requested comments by May 2, 2024, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of TUVAM's NRTL scope of recognition.

To review copies of all public documents pertaining to TUVAM's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor at (202) 693–2350. Docket No. OSHA–2007–0043 contains all materials in the record concerning TUVAM's recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined TUVAM's expansion application and examined other pertinent information. Based on its review of this evidence, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant TUVAM's expanded scope of recognition. OSHA limits the expansion of TUVAM's recognition to include the testing and certification of products for demonstration of conformance to the test standards shown below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 50E	Safety Enclosures for Electrical Equipment, Environmental Considerations.
UL 3100	Automated Mobile Platforms (AMPs).
UL 60335–2–29	Household and Similar Electrical Appliances: Particular Requirements for Battery Chargers.
UL 61010–2–201	Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–201: Particular Requirements for Control Equipment.
UL 60950–22	Information Technology Equipment Safety—Part 22: Equipment to be Installed Outdoors.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including but not limited to, abiding by the following conditions of recognition:

1. TUVAM 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. TUVAM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on TUVAM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVAM as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy 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. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–16874 Filed 7–31–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0007]

Nationally Recognized Testing Laboratories; 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 Program Regulation for Nationally Recognized Testing Laboratories (the Regulation).

DATES: Comments must be submitted (postmarked, sent, or received) by September 30, 2024.

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 website. 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–2010–0007) 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: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor. Telephone (202) 693–2222.

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 a number of standards issued by OSHA contain requirements that specify employers use only equipment, products, or material tested or approved by a Nationally Recognized Testing Laboratory (NRTL). These requirements ensure that employers use safe and efficacious equipment, products, or materials in complying with the standards. Accordingly, OSHA promulgated the Program Regulation for Nationally Recognized Testing Laboratories, 29 CFR 1910.7 (the Regulation). The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for safe use in the workplace.

II. Special Issues for Comment

OSHA has 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 organizations that must comply, for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Definition and Requirements for a Nationally Recognized Testing Laboratory. The agency is requesting an adjustment increased in burden hours from 1,572 to 1,588, a total increase of 16 hours. This increase is due to an increase in the number of audits conducted each year from 47 to 48. Also, the total capital cost increased from $757,440 to $767,736.

The agency 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 these information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Definition and Requirements of a Nationally Recognized Testing Laboratory.

OMB Control Number: 1218–0147.

Affected Public: Business or other for-profits.

Number of Respondents: 24.

Frequency of Recordkeeping: On occasion.

Total Responses: 148.

Average Time per Response: Varies.

Estimated Total Burden Hours: 1,588.

Estimated Cost (Operation and Maintenance): $767,736.

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. All comments, attachments and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2010–0007). You may supplement electronic submissions by uploading document files electronically.

Comments and submission 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://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

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)), the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on July 24, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–16916 Filed 7–31–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NASA Document Number: 24–048; NASA Docket Number: NASA–2024–0006]

Name of Information Collection: NASA Communications Research

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a new information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are due by September 30, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice at *http://www.regulations.gov* and search for NASA Docket NASA–2024–0006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, phone 256–714–8575, or email *hq-ocio-pra-program@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection supports NASA's efforts to implement the National Aeronautics and Space Act, as amended, 51 U.S.C. 20112(a)(3) to better understand and inform strategies to improve the outcomes in how we ''provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof.'' Through this effort, NASA seeks to collect information that will help best understand the current results of its communications to the American public, and how to apply resources to most efficiently and effectively fulfill that foundational function of NASA. This data collection is part of an effort to have an audience-oriented and data-driven approach to assessing NASA's performance against this mandate in a manner that is objective, standardized, and repeatable.

This information will be used by NASA to measure the American public's knowledge of the agency, its activities, the overall sector and the government's role in it, and how those factors vary across demographics. This type of research is standard in the commercial communications industry. NASA will use the information to adjust its communication strategies and methods, widen dissemination, better reach demographics with low awareness or misinformation, and tailor information to specific appropriate audiences, ensuring more effective and equitable dissemination.

II. Methods of Collection

Web-based, email, and telephone.

III. Data

Title: NASA Communications Research.

OMB Number: 2700–xxxx.

Type of Review: Review of New Information Collection.

Affected Public: Individuals in the U.S. Population.

Estimated Annual Number of Activities: 1,500.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 1,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 375.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–16919 Filed 7–31–24; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0169]

Information Collection: Fitness for Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Fitness for Duty Programs.''

DATES: Submit comments by September 3, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0169 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0169.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, 10 CFR part 26, ''Fitness for Duty Programs.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 7, 2024, 89 FR 38195.

1. *The title of the information collection:* 10 CFR part 26, ''Fitness for Duty Programs.''
2. *OMB approval number:* 3150–0146.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 890, ''Single Positive Test Form,'' NRC Form 891, ''Annual Reporting Form for Drug and Alcohol Tests,'' and NRC Form 892, ''Annual Fatigue Reporting Form.''
5. *How often the collection is required or requested:* Annually and on occasion. The NRC receives reports on an annual basis that detail fitness-for-duty (FFD) program performance. The NRC also receives, on occasion, reports associated with FFD policy violations or programmatic failures. Depending on the type of violation or programmatic failure, the report would be made within 24 hours of the event occurrence, or within 30 days of completing an investigation into a programmatic failure.
6. *Who will be required or asked to respond:* Nuclear power reactor licensees licensed under 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'' and 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' (except those who have permanently ceased operations and have verified that fuel has been permanently removed from the reactor); all holders of nuclear power plant construction permits and early site permits with a limited work authorization and applicants for nuclear power plant construction permits that have a limited work authorization under the provisions of 10 CFR part 50; all holders of a combined license for a nuclear power plant issued under 10 CFR part 52 and applicants for a combined license that have a limited work authorization; all licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) under the provisions of 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material;'' all holders of a certificate of compliance of an approved compliance plan issued under 10 CFR part 76 ''Certification of Gaseous Diffusion Plants,'' if the holder engages in

activities involving formula quantities of SSNM; and all contractor/vendors (C/Vs) who implement FFD programs or program elements to the extent that the licensees and other entities listed in this paragraph rely on those C/V FFD programs or program elements to comply with 10 CFR part 26.

7. *The estimated number of annual responses:* 324,646 responses (254 reporting responses + 49 recordkeepers + 324,343 third-party disclosure responses).

8. *The estimated number of annual respondents:* 64,392 respondents (28 drug and alcohol testing programs + 21 fatigue management programs + 64,343 third party respondents).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 540,050 (5,301 hours reporting + 169,746 hours recordkeeping + 365,003 hours third-party disclosure).

10. *Abstract:* The NRC regulations in 10 CFR part 26 prescribe requirements to establish, implement, and maintain FFD programs at affected licensees and other entities. The objectives of these requirements are to provide reasonable assurance that persons subject to the rule are trustworthy, reliable, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way could adversely affect their ability to safely and competently perform their duties. These requirements also provide reasonable assurance that the effects of fatigue and degraded alertness on individual's abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety. The information collections required by 10 CFR part 26 are necessary to properly manage FFD programs and to enable effective and efficient regulatory oversight of affected licensees and other entities. These licensees and other entities must perform certain tasks, maintain records, and submit reports to comply with 10 CFR part 26 drug and alcohol and fatigue management requirements. These records and reports are necessary to enable regulatory inspection and evaluation of a licensee's or other entity's compliance with NRC regulations, FFD performance, and significant FFD-related events to help maintain public health and safety, promote the common defense and security, and protect the environment.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	Adams accession No.
Supporting Statement	ML24194A014
Burden Spreadsheet	ML24194A016
NRC Form 890, ''Single Positive Test Form''	ML22321A221
NRC Form 891, ''Annual Reporting Form for Drug and Alcohol Tests''	ML22321A193
NRC Form 892, ''Annual Fatigue Reporting Form''	ML22013B250

Dated: July 29, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–16966 Filed 7–31–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400; NRC–2024–0125]

Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a February 6, 2024, request, as supplemented by letters dated April 3 and June 7, 2024, from Duke Energy Progress, LLC (the licensee). The exemption relieves the licensee from NRC regulations requiring specific reactor protection system cables at Shearon Harris Nuclear Power Plant, Unit 1, to meet certain requirements of the Electrical and Electronics Engineers (IEEE) Standard 279–1971, ''Criteria for Protection Systems for Nuclear Power Generating Stations.''

DATES: The exemption was issued on July 26, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0125 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0125. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Mahoney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3867; email: *Michael.Mahoney@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 29, 2024.

For the Nuclear Regulatory Commission.

Michael Mahoney,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment: Exemption

Nuclear Regulatory Commission

Docket No. 50–400

Duke Energy Progress, LLC

Shearon Harris Nuclear Power Plant, Unit 1

Exemption

I. Background

Duke Energy Progress, LLC (Duke Energy, the licensee) is the holder of Renewed Facility Operating License No. NPF–63, which authorizes operation of Shearon Harris Nuclear Power Plant, Unit 1 (Harris). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located in Wake and Chatham Counties, North Carolina.

II. Request/Action

By application dated February 6, 2024 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML24037A284), as supplemented by letters dated April 3, 2024 (ML24094A105), and June 7, 2024 (ML24159A746), Duke Energy, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.12, ''Specific exemptions,'' requested an exemption from a provision in the Institute of Electrical and Electronics Engineers (IEEE) Standard (std) 279–1971, ''Criteria for Protection Systems for Nuclear Power Generating Stations,'' that is required by CFR 50.55a(h)(2), ''Protection systems,'' for Harris. Specifically, the exemption request would remove the requirement for the Harris reactor protection system (RPS) cables that terminate within turbine control system (TCS) Cabinet G (1TCS–CAB–G) to be independent and physically separated in accordance with IEEE 279–1971, Section 4.6, ''Channel Independence.'' The licensee stated that application of the regulation in this circumstance would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule. The exemption request was submitted for review under the NRC's Risk-Informed Process for Evaluations (RIPE).

III. Discussion

The regulations in 10 CFR 50.55a(h)(2) state:

> For nuclear power plants with construction permits issued after January 1, 1971, but before May 13, 1999, protection systems must meet the requirements in IEEE Std 279–1968, ''Proposed IEEE Criteria for Nuclear Power Plant Protection Systems,'' or the requirements in IEEE Std 279–1971, ''Criteria for Protection Systems for Nuclear Power Generating Stations,'' or the requirements in IEEE Std 603–1991, ''Criteria for Safety Systems for Nuclear Power Generating Stations,'' and the correction sheet dated January 30, 1995. For nuclear power plants with construction permits issued before January 1, 1971, protection systems must be consistent with their licensing basis or may meet the requirements of IEEE Std. 603–1991 and the correction sheet dated January 30, 1995.

Duke Energy requested an exemption from IEEE 279–1971, Section 4.6, as required by 10 CFR 50.55a(h)(2), for specific RPS cables at Harris. Contrary to the requirements in IEEE 279–1971, Section 4.6, the safety-related RPS cables that terminate within TCS Cabinet G are not independent and physically separated from the non-safety-related TCS cables. The licensee requested the exemption in order to maintain the current configuration of the TCS circuitry at Harris.

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from requirements of 10 CFR part 50 when: (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) special circumstances, as defined in 10 CFR 50.12(a)(2), are present. The licensee states that the special circumstances associated with its exemption request are that the ''application of the regulation in this circumstance would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule.''

The exemption request was submitted for review under the RIPE, which is described in the NRC's ''Guidelines for Characterizing the Safety Impact of Issues,'' Revision 2 (referenced henceforth as SIC) (ML22088A135). The Office of Nuclear Reactor Regulation (NRR) temporary staff guidance (TSG) document TSG–DORL–2021–01, Revision 3 (ML23122A014), provides the framework and guidance for the staff to implement the streamlined processing of exemption requests from NRC requirements submitted under RIPE. Use of RIPE for exemption requests is limited to issues for which the safety impact can be modeled using probabilistic risk assessment (PRA) and shown to have a minimal safety impact per SIC. RIPE is based on the application of pre-existing risk-informed criteria that allows for the staff's review and disposition of the submittal to be streamlined and efficient.

As described in the SIC, all the following must apply in order to characterize an issue as having a minimal safety impact and qualify for consideration under the RIPE:

- The issue contributes less than 1×10^{-7}/year to core damage frequency (CDF);
- The issue contributes less than 1×10^{-8}/year to large early release frequency (LERF);
- The issue has no safety impact or minimal safety impact in accordance with the SIC; and
- Cumulative risk is assessed based on plant-specific CDF and LERF. Cumulative risk is acceptable for the purposes of this guidance if baseline risk remains less than 1×10^{-4}/year for CDF and less than 1×10^{-5}/year for LERF once the impact of the proposed change is incorporated into baseline risk.

RIPE exemption requests must also include defense-in-depth (DID) and safety margin considerations assessed by the integrated decision-making panel (IDP).

Requests for changes made under the RIPE are reviewed by the NRC staff in a manner consistent with the principles of risk-informed decision-making outlined in Regulatory Guide 1.174, Revision 3, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis'' (ML17317A256), which includes ensuring that the proposed change is consistent with DID philosophy, maintains sufficient safety margins, is consistent with the Commission's Safety Goal Policy Statement, and includes performance monitoring strategies.

Conformance With the RIPE Minimal Safety Impact Criteria

The licensee considered the RIPE screening questions contained in the SIC and concluded that the requested exemption would not have a more than minimal impact on safety. Considerations for each of the five screening questions are discussed below.

1. Does the issue result in an adverse impact on the frequency of occurrence of an accident initiator or result in a new accident initiator?

In Section 4.4 of the exemption request, the licensee states that the issue does not result in an adverse impact on the frequency of occurrence of an accident initiator or result in a new accident initiator because the cables impacted by the issue are associated with the solid state protection system (SSPS), which provides the logic to develop reactor trip and emergency safety feature actuation signals (ESFAS). The licensee also states that the SSPS provides a mitigation function and does not initiate an accident or create a new accident initiator.

The NRC staff reviewed the licensee's consideration of this screening element and concluded that the issue does not adversely impact the frequency of occurrence of an accident initiator or result in a new accident initiator because the SSPS provides a mitigation function and does not initiate an accident.

2. Does the issue result in an adverse impact on the availability, reliability, or capability of structures, systems, or components (SSCs) or personnel relied upon to mitigate a transient, accident, or natural hazard?

In Section 4.4 of the exemption request, the licensee states that the issue does not result in an adverse impact on the availability, reliability, or capability of SSCs or personnel relied upon to mitigate a transient, accident, or natural hazard because the safety-related protection trains will remain fully capable of performing their intended functions. The licensee's conclusion is based on an evaluation that reviewed potential sources of electrical anomalies and the mitigation techniques used to reduce the probability of an event occurring that could impact plant equipment. The electrical anomaly evaluation is described in Section 4.1 of the exemption request and included evaluation of the cabinet design, cabinet location, electrical grounding, power source design, signal attenuation due to cable length, equipment qualification, cable routing, previous testing of low-level instrument wiring, plant operating experience, and the requirements in IEEE 384–1974, ''IEEE Trial-Use Standard Criteria for Separation of Class 1E Equipment and Circuits.'' The evaluation concludes that there are no credible electrical anomaly events which could impact either train of safety-related equipment from performing its design basis function.

The license stated that the turbine trip logic connects to the SSPS and RPS through four control relays that use redundant contacts from the reactor trip breaker. In addition, the licensee stated the reactor trip breaker auxiliary contacts provide indication of a reactor trip to the turbine trip system (TTS) and that an open or short of the contacts used for the non-safety related portion of the circuit would not prevent a reactor trip from occurring, if required, because the auxiliary contacts are not in the direct electrical path of the reactor trip breakers. The cables and conduits for each of these circuits follow the separation criteria requirements except for Terminal Box B and TCS Cabinet G. The isolation between the TCS and the RPS/SSPS trains is provided in the RPS and SSPS cabinets.

In the exemption request, the licensee stated that if a short circuit were to occur, the impact would be limited to a single train of the TTS and that multiple shorts would be needed to impact both TTS trains. In its supplement dated June 7, 2024, the licensee stated:

> A fault of the TTS cables could impact the non-safety-related automatic turbine trip on reactor trip function. For example, a fault could cause a short circuit which could bypass the SSPS turbine trip output relay contacts, thus preventing the turbine from tripping. If this were to occur and a reactor trip occurred, Operations would trip the turbine manually by the Main Control Board turbine trip switch per step 2 of [Harris] Emergency Operating Procedure EOP–E–0, ''REACTOR TRIP OR SAFETY INJECTION.''

Under 10 CFR 50.62(c)(1), each pressurized-water reactor must have equipment, from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary feedwater system and initiate a turbine trip under conditions indicative of an anticipated transient without scram (ATWS). Harris complied with this requirement by installing ATWS mitigation system actuation circuitry (AMSAC). The NRC staff notes that AMSAC would remain available to trip the turbine if an ATWS were to occur.

The NRC staff reviewed the licensee's consideration of this screening element and determined that an adverse impact to the availability, reliability, or capability of SSCs relied upon to mitigate a transient, accident, or natural hazard exists because the separation and channel independence requirements of IEEE 279–1971 are not met in TCS Cabinet G. However, the licensee's evaluation of the TCS circuitry demonstrates that, while the exemption would rely on non-safety-related equipment to prevent potential electrical anomalies from propagating to safety-related components, the TCS design is robust and configured such that any electrical perturbations are unlikely. Should an electrical short condition result in failure of an automatic turbine trip, pre-existing procedurally directed operator actions are available to manually initiate the required turbine trip.

The NRC staff concluded that the adverse impact of not meeting the separation and channel independence requirements of IEEE 279–1971, Section 4.6, for the RPS cables that terminate within TCS Cabinet G on the availability, reliability, or capability of SSCs or personnel relied upon to mitigate a transient, accident, or natural hazard is not more than minimal because (1) the design of the TCS ensures it is unlikely that an electrical anomaly event could occur that would prevent either train of safety-related equipment from performing its design basis function, (2) not meeting separation and channel independence requirements would not impact the reactor trip breakers because the turbine trip logic is not directly electrically connected the reactor trip breakers, and (3) operator actions and AMSAC would remain available to trip the turbine in the unlikely event that a fault prevented the turbine trip from occurring automatically.

3. Does the issue result in an adverse impact on the consequences of an accident sequence?

In Section 4.4 of the exemption request, the licensee stated that the issue does not affect the safety-related design functions of the SSPS or RPS. The licensee also states the design function of the SSPS to mitigate an accident is not impacted and therefore the consequences of any accident previously evaluated are not impacted. In its supplement dated June 7, 2024, the licensee stated that a fault of the TTS cables could impact the non-safety-related automatic turbine trip on reactor trip function, but procedurally directed operator actions would remain available to manually trip the turbine if needed.

The NRC staff reviewed the licensee's consideration of this screening element and concluded that the proposed exemption does not result in an adverse impact on the consequences of an accident because the proposed exemption does not prevent the ability of the safety-related systems to perform their design functions.

4. Does the issue result in an adverse impact on the capability of a fission product barrier?

In Section 4.4 of the exemption request, the licensee stated that the issue does not affect operating limits, the fuel, reactor coolant system (RCS), or modify the containment boundary in any way. The cables are located outside the containment building and do not result in revising or challenging a design

basis limit for a fission product barrier (*i.e.,* numerical limiting value for controlling the integrity of the fuel cladding, reactor coolant pressure boundary, and/or containment) as described in the Updated Final Safety Analysis Report. Furthermore, the licensee stated the proposed exemption does not prevent the ability of the safety-related systems to perform their design functions.

The NRC staff reviewed the licensee's consideration of this screening element and concluded that the proposed exemption does not result in an adverse impact on the capability of a fission product barrier because the proposed exemption does not prevent the ability of safety-related systems, including RCS and containment, to perform their design functions or alter any design-basis limits.

5. Does the issue result in an adverse impact on DID capability or impact in safety margin?

In Section 4.4. of the exemption request, the licensee stated that there is no adverse impact on DID and safety margins because there are no credible events that would prevent both trains of safety-related equipment from fulfilling their design-basis functions. The licensee's conclusion is based on an evaluation of the potential for electrical anomalies described in Section 4.1 of the exemption request, which included evaluation of the cabinet design, cabinet location, electrical grounding, power source design, signal attenuation due to cable length, equipment qualification, cable routing, previous testing of low-level instrument wiring, plant operating experience, and the requirements in IEEE 384–1974. The evaluation concluded that there are no credible electrical anomaly events which could impact either train of safety-related equipment from performing its design-basis function.

The licensee stated that, based on the evaluation that established there are no credible events that would impact both trains of safety-related equipment from performing its design-basis function, the key aspects of IEEE 279–1971 for single failure criterion and channel integrity are maintained. The licensee also stated that while the common connection for the ''A'' and ''B'' trains in the TCS does challenge the channel independence requirement of IEEE 279–1971, Section 4.6, there is not a credible reduction in the ability of the safety-related systems to perform their intended design functions. The licensee further stated that exemption to the IEEE 279–1971, Section 4.6, requirement will not impact the ability of the safety-related protection trains to remain fully capable of performing their intended design functions in generating the signals associated with actuating reactor trip and engineered safeguards, as required by IEEE 279–1971.

In its response to screening question 2, the licensee stated that the turbine trip logic connects to the SSPS and RPS through four control relays that use redundant contacts from the reactor trip breaker and that an open or short of the contacts used for the non-safety related portion of the circuit would not prevent a reactor trip from occurring, if required, because the auxiliary contacts are not in the direct electrical path of the reactor trip breakers. The licensee also stated that the isolation between the TCS and the RPS/SSPS trains is provided in the RPS and SSPS cabinets. Further, the licensee stated that if a short circuit were to occur, the impact would be limited to a single train and the ability to trip the turbine would not be lost. In its supplement dated June 7, 2024, the licensee stated that a fault of the TTS cables could impact the non-safety-related automatic turbine trip on reactor trip function, but procedurally directed operator actions would remain available to manually trip the turbine if needed. In addition, the NRC staff notes that AMSAC would remain available to trip the turbine if an ATWS were to occur, such as due to multiple shorts occurring (which is outside of the single failure proof design criteria).

The NRC staff reviewed the licensee's consideration of this screening element and determined that the licensee describes a potential adverse impact to DID and safety margins because the channel independence requirements of IEEE 279–1971 are not met in TCS Cabinet G. However, the licensee's evaluation of the TCS circuitry demonstrates that, while the exemption would rely on non-safety-related equipment to prevent potential electrical anomalies from propagating to safety-related components, the TCS design is robust and configured such that any electrical perturbations are unlikely. In the unlikely event that an electrical condition results in failure of an automatic turbine trip, procedurally directed operator actions are available to manually trip the turbine. The use of pre-existing procedurally controlled operator actions to provide diversity and DID for this unlikely scenario does not result in the over-reliance on programmatic measures.

The NRC staff concluded that the adverse impact of not meeting the separation and channel independence requirements of IEEE 279–1971, Section 4.6, for the RPS cables that terminate within TCS Cabinet G on DID capability and safety margins is not more than minimal because (1) the design of the TCS ensures it is unlikely that an electrical anomaly event could occur that would prevent either train of safety-related equipment from performing its design-basis functions, (2) not meeting channel independence requirements would not impact the reactor trip breakers because the turbine trip logic is not directly electrically connected the reactor trip breakers, and (3) operator actions and AMSAC would remain available to trip the turbine in the unlikely event that a fault prevented the turbine trip from occurring automatically.

Implementation of an IDP

The licensee has been approved to adopt 10 CFR 50.69, ''Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors,'' by license amendment No. 174, issued September 17, 2019 (ML19192A012), as revised by license amendment No. 188, issued January 19, 2022 (ML21316A248). The licensee established a multi-disciplinary IDP to evaluate the proposed exemption request. The IDP membership included personnel from site engineering, operations, PRA, safety analysis, and licensing. Therefore, the NRC staff concludes that Harris used an acceptable IDP in support of the proposed exemption request per the RIPE guidance in TSG–DORL–2021–01.

Use of an Acceptable/Approved PRA Model

Harris has adopted risk-informed initiative Technical Specifications Task Force (TSTF) traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4b,'' for the risk-informed completion time program, as approved by license amendment No. 184, issued April 2, 2021 (ML21047A314). The Harris PRA model used to support the risk-informed completion time license amendment includes internal events, internal flooding, and fire hazards. The Harris PRA model does not include high winds, external flooding, or seismic hazards due to meeting screening criteria as part of the approval of its risk-informed completion time license amendment. There are no concerns in this exemption request specifically related to high winds, external flooding, or seismic hazards. Implementation of the TSTF–505 license amendment and associated license conditions have been completed. Therefore, the NRC staff concludes that Harris used a technically acceptable PRA model in support of the

proposed exemption request per the RIPE guidance in the SIC.

Evaluation of PRA Results

The licensee quantitatively assessed the risk significance of maintaining the current TCS circuitry at Harris with the proposed exemption using a surrogate to represent the potential for a hot short to fail the ability of (1) the turbine to trip upon a reactor trip, (2) the reactor to trip upon a valid RPS signal, and (3) the ESFAS to actuate upon a valid actuation. The surrogate basic event was applied in the logic model where turbine trips, RPS signal failures, and ESFAS actuations were modeled. The surrogate basic event probability was based on the conditional probability of a hot short to occur during a conservative selection of fires that impact either train of SSPS. The risk results were 1.6×10^{-8}/year for CDF and less than 1×10^{-10}/year for LERF. These results satisfy the RIPE criteria of contributing less than 1×10^{-7}/year to CDF and 1×10^{-8}/year to LERF. Cumulative risk results were 4.1×10^{-5}/year for CDF and 3.5×10^{-6}/year for LERF. Therefore, cumulative risk for Harris remains less than the RIPE criteria of 1×10^{-4}/year for CDF and 1×10^{-5}/year for LERF. The NRC staff concludes that these results satisfy the RIPE criteria for a minimal increase in risk for the proposed exemption.

Evaluation of the Need for Risk Management Actions

Evaluation of the RIPE screening questions and the PRA results confirm that the proposed exemption results in a minimal safety impact. For these results, the SIC guidance states that risk management actions must be considered to offset the risk increase for the NRC staff to review under RIPE. Section 4.3 of the exemption request states that a review of industry operating experience related to the issue did not identify any specific modifications necessary to assess and/or bound the impact of the issue on quantitative risk. Therefore, the NRC staff concluded that no risk management actions were identified or required.

Assessment of Performance Monitoring Strategies

Section 4.1 of the exemption request states that the TSC was upgraded in 2018 but the cables in question have not been moved since original plant construction. Both the previous and current designs energize the control circuits continuously so that a loss of power would result in a turbine trip. The previous design tested the circuit quarterly. The current design cycles the control relays weekly, and this test has been performed once a week for over 5 years. There have been no instances of spurious control circuit anomalies attributed to the TCS trip relays cycling on and off.

The NRC staff concluded that the existing performance monitoring strategies will ensure no deficiencies exist that would challenge the conclusions in the licensee's evaluation of the proposed exemption.

A. The Exemption is Authorized by Law

The NRC has the authority under 10 CFR 50.12 to grant exemptions from the requirements of Part 50 upon demonstration of proper justification. The licensee has requested an exemption to the requirement in 10 CFR 50.55a(h)(2) requiring protection systems meet the requirements of IEEE 279–1971, Section 4.6, for safety-related RPS cables that terminate within TCS Cabinet G. As discussed below, the NRC staff determined that special circumstances exist, which support granting the proposed exemption. Furthermore, granting the exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The NRC staff has concluded that the exemption represents low risk, is of minimal safety impact, and that adequate DID and safety margins are preserved. The NRC staff concluded that the licensee's submittal demonstrates that the design of the TCS is robust against electrical failures that would prevent the RPS from performing their intended functions with the proposed exemption. Thus, granting this exemption request will not pose undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The NRC staff has evaluated the licensee's exemption request and concluded that the licensee's submittal demonstrates that the design of the TCS is robust against electrical failures that would prevent the RPS from performing their intended functions with the proposed exemption. The NRC staff also concluded that adequate DID and safety margins will be preserved with the requested exemption. Further, the exemption does not involve security requirements and does not create a security risk. Therefore, the exemption is consistent with the common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the circumstances would not serve the purpose of the rule or is not necessary to achieve the purpose of the rule. The licensee has requested a limited scope exemption from 10 CFR 50.55a(h)(2) that would only apply to the RPS cables that terminate within TCS Cabinet G. Specifically, the exemption request would remove the requirement for the RPS cables that terminate within TCS Cabinet G to be independent and physically separated in accordance with IEEE 279–1971, Section 4.6. The underlying purpose of IEEE 279–1971, Section 4.6, is to ensure the capability of the safety-related system to accomplish its safety function during normal and accident conditions and reduce the likelihood of interactions between channels during maintenance operations or in the event of a channel malfunction.

The licensee has supported that the design of the TCS is adequate to ensure that the lack of independence and physical separation between TCS and RPS cables in TCS Cabinet G is unlikely to prevent either system from being able to perform their intended functions. In addition, the licensee has also demonstrated that adequate DID and safety margins will be preserved with the requested exemption. For these reasons, the NRC staff finds that for this limited scope exemption to the requirements of 10 CFR 50.55a(h)(2) for the safety-related RPS cables that terminate within TCS Cabinet G, application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

E. Environmental Considerations

The exemption requested by the licensee includes changes to requirements with respect to installation or use of a facility component located within the restricted area. The NRC staff determined that the exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because the granting of this exemption involves: (i) no significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the

NRC's consideration of this exemption request. The basis for the NRC staff's determination of each of the requirements in 10 CFR 51.22(c)(9) is discussed below.

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated the issue of no significant hazards consideration using the standards described in 10 CFR 50.92(c), as presented below:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design of the TCS is robust against electrical failures that would prevent the RPS from performing their intended functions with the proposed exemption and does not modify how the plant is operated. The proposed exemption does not affect any plant protective boundaries, cause a release of fission products to the public, or alter the performance of any SSCs important to safety.

Therefore, the proposed exemption does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The design of the TCS is robust against electrical failures that would prevent the RPS from performing their intended functions with the proposed exemption and does not modify how the plant is operated. In addition, the TTS and RPS provide mitigation functions and do not initiate accidents or create a new accident initiators.

Therefore, the proposed exemption does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

Response: No.

The design of the TCS is robust against electrical failures that would prevent the RPS from performing their intended functions with the proposed exemption and does not modify how the plant is operated. The proposed exemption does not alter any setpoints for protective actions, change the initial conditions for any accidents, or alter the requirements of any SSCs important to safety.

Therefore, the proposed exemption does not involve a significant reduction in a margin of safety.

The NRC staff concludes that the proposed exemption presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified (*i.e.,* satisfies the provision of 10 CFR 51.22(c)(9)(i)).

Requirements in 10 CFR 51.22(c)(9)(ii)

The design of the TCS is robust against electrical failures that would prevent the RPS from performing their intended functions with the proposed exemption and does not modify how the plant is operated. The proposed exemption does not alter any setpoints for protective actions, change the initial conditions for any accidents, or alter the requirements of any SSCs important to safety. The proposed exemption will not significantly change the types or amounts of effluents that may be released offsite. Therefore, the staff finds that the provision of 10 CFR 51.22(c)(9)(ii) is satisfied.

Requirements in 10 CFR 51.22(c)(9)(iii)

The licensee's request supported that the exemption had either no or a minimal safety impact for all accident initiator categories and the NRC staff has concluded that the proposed exemption will not result in an adverse impact on the frequency of existing accident initiators or result in new accident initiators. The proposed exemption will not significantly increase individual occupational radiation exposure, or significantly increase cumulative public or occupational radiation exposure. Therefore, the staff finds that the provision of 10 CFR 51.22(c)(9)(iii) is satisfied.

The NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's proposed granting of this exemption.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Duke Energy an exemption from IEEE 279–1971, Section 4.6, as required by 10 CFR 50.55a(h)(2), for the safety-related RPS cables at Harris that terminate within TCS Cabinet G.

Dated: July 29, 2024.

For the Nuclear Regulatory Commission.

MICHAEL MAHONEY,

Project Manager, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–16978 Filed 7–31–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024–174; MC2024–455 and CP2024–462; MC2024–456 and CP2024–463]

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:* August 5, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://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

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

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each 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 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

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]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), 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 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2024–174; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 43, Filed Under Seal; *Filing Acceptance Date:* July 26, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 5, 2024.

2. *Docket No(s).:* MC2024–455 and CP2024–462; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 292 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 5, 2024.

3. *Docket No(s).:* MC2024–456 and CP2024–463; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 182 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* August 5, 2024.

[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).

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2024–16972 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 179 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–450, CP2024–457.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16925 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 290 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–451, CP2024–458.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16931 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 292 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–455, CP2024–462.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16933 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 178 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–449, CP2024–456.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16924 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 181 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–453, CP2024–460.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16927 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 288 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–447, CP2024–454.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16929 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 291 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–454, CP2024–461.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16932 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 180 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–452, CP2024–459.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16926 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 174 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2024–443, CP2024–450.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16920 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 176 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–445, CP2024–452.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16922 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 289 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–448, CP2024–455.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16930 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 26, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 182 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–456, CP2024–463.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16928 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 291 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–454, CP2024–461.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16923 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 1, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 175 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–444, CP2024–451.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–16921 Filed 7–31–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100609; File No. SR–NYSE–2024–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 7.31(f)(1)

July 26, 2024.

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 July 16, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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

The Exchange proposes to amend Rule 7.31(f)(1) regarding Directed Orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

Rule 7.31(f)(1) currently defines a Directed Order as a Limit Order with instructions to route on arrival at its limit price to a specified alternative trading system (''ATS'') with which the Exchange maintains an electronic linkage. Directed Orders are available for all securities eligible to trade on the Exchange. Directed Orders are not assigned a working time and do not interact with interest on the Exchange Book. Rule 7.31(f)(1) further provides that the ATS to which a Directed Order is routed is responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled.

Rule 7.31(f)(1)(A) provides that a Directed Order must be designated for the Exchange's Core Trading Session. A Directed Order must be designated with a Time in Force modifier of IOC or Day and is routed to the specified ATS with such modifier. Rule 7.31(f)(1)(A) also provides that a Directed Order may not be designated with any other modifiers defined in Rule 7.31.

Rule 7.31(f)(1)(B) provides that a Directed Order in a security to be opened in an initial public offering (''IPO'') or a Direct Listing will be rejected if received before the IPO Auction or Direct Listing Auction concludes.

Rule 7.31(f)(1)(C) provides that an incoming Directed Order will be rejected if received during a trading halt or pause.

Rule 7.31(f)(1)(D) provides that a request to cancel a Directed Order designated Day is routed to the ATS to which the order was routed.

Proposed Rule Change

The Exchange proposes to amend Rule 7.31(f)(1) to provide for Directed Orders routed to an algorithm. Specifically, the Exchange proposes to permit Directed Orders to be designated to route to a broker-dealer algorithm with which the Exchange has established connectivity.[4] As proposed, the member organization entering the Directed Order would select the algorithm to which the Directed Order would be routed and provide instructions for the handling of such order by the routing destination. As with the existing Directed Order routed to an ATS, the Exchange's only role would be to route the order to the designated algorithm as instructed. Consistent with current rules governing the Directed Order to an ATS, a Directed Order designated for an algorithm would not interact with the Exchange Book, and the Exchange would not exercise any discretion in determining where the order is routed. Similarly, the algorithm selected by the member organization entering the Directed Order would be responsible for validating whether the order is eligible to be accepted, and if the algorithm determines to reject the order, the Directed Order would be cancelled.

To effect this change, the Exchange first proposes to amend the definition of a Directed Order in Rule 7.31(f)(1) to provide that a Directed Order is a Limit Order or Market Order with instructions to route on arrival to an ATS or algorithm with which the Exchange maintains an electronic linkage. Directed Orders will continue to be available for all securities eligible to trade on the Exchange and will not be assigned a working time or interact with interest on the Exchange Book. The Exchange further proposes to amend Rule 7.31(f)(1) to specify that the ATS or algorithm to which the Directed Order is routed, as applicable, will validate whether the order is eligible to be accepted, and if it rejects the order, the order will be cancelled.

In amending Rule 7.31(f)(1) to allow for the routing of Directed Orders to an algorithm, the Exchange also proposes to permit Directed Orders to be entered as either a Limit Order or Market Order. The Exchange believes that permitting Directed Orders to be entered as Market Orders would facilitate market participants' existing functional workflows when routing to algorithms. A member organization routing a Directed Order to an algorithm may, for example, wish to send a parent order with Market Order instructions for execution via smaller limited child orders over several hours of the trading day.

The Exchange next proposes to delete current Rule 7.31(f)(1)(A), which provides that Directed Orders must be designated for the Exchange's Core Trading Session, must be designated either IOC or Day, and may not be designated with any other modifiers defined in Rule 7.31. Consistent with this proposed change, the Exchange also proposes to delete current Rule 7.34(c)(1)(E), which provides that Directed Orders designated for the Early Trading Session will be rejected, and to make a conforming change in Rule 7.34(c)(1) to reference ''paragraphs (c)(1)(A) through (D)'' to reflect the deletion of Rule 7.34(c)(1)(E). The Exchange's proposal to permit Directed Orders to be routed during any trading session is intended to allow the routing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange proposes to route such Directed Orders only to a range of broker-dealer algorithms that have completed its qualification and onboarding processes to establish routing connectivity with the Exchange. The Exchange does not currently have and will not enter into any financial or other arrangements with any algorithm provider, and will not enter into any such arrangement with any algorithm provider with respect to the proposed Directed Orders.

destinations receiving such orders to determine whether they are eligible to trade in a given trading session. The Exchange will pass on the instructions provided by the member organization entering the Directed Order, and the routing destination will be responsible for validating whether the order will be accepted or rejected, as contemplated by Rule 7.31(f)(1).

The Exchange next proposes to renumber current Rule 7.31(f)(1)(B) as Rule 7.31(f)(1)(A) to reflect the deletion of current Rule 7.31(f)(1)(A) and to amend new Rule 7.31(f)(1)(A) to provide that a Directed Order that is a Market Order in a security to be opened in an IPO or Direct Listing will be rejected if received before the IPO Auction or Direct Listing Auction concludes. This proposed change would permit the Exchange to route Directed Orders that are Limit Orders in securities to be opened in an IPO or Direct Listing, but not Directed Orders that are Market Orders.

The Exchange also proposes to amend current Rule 7.31(f)(1)(C), which provides that incoming Directed Orders would be rejected during trading halts or pauses, and to renumber it as Rule 7.31(f)(1)(B) to reflect the deletion of current Rule 7.31(f)(1)(A) as described above. The Exchange proposes that new Rule 7.31(f)(1)(B) would provide that, during a trading halt or pause, Directed Orders would be routed to the specified ATS or algorithm. The Exchange believes that the proposed elimination of the restrictions on Directed Orders currently set forth in Rules 7.31(f)(1)(A) and (C) would provide member organizations with additional flexibility when entering Directed Orders, which would remain subject to the rules and specifications of the destinations to which such orders are routed. As provided in Rule 7.31(f)(1), as amended, the ATS or algorithm to which a Directed Order is routed would validate whether the order is eligible to be accepted; accordingly, Directed Orders would continue to be limited to the order types and modifiers accepted by the destinations to which they are routed and subject to such routing destinations' procedures for orders received during a trading halt or pause.

Finally, the Exchange proposes to renumber current Rule 7.31(f)(1)(D) as Rule 7.31(f)(1)(C) (to reflect the deletion of current Rule 7.31(f)(1)(A) and resulting renumbering of current Rules 7.31(f)(1)(B) and (C)) and to amend the rule to provide that a request to cancel a Directed Order will be routed to the ATS or algorithm to which the order was routed.

The proposed change would provide member organizations with a technology solution to leverage their existing Exchange connectivity to route Directed Orders to either an ATS or algorithm, thereby affording them increased access to execution tools and enhanced operational efficiency.[5] The Exchange believes the proposed change would offer member organizations greater choice and flexibility, and further believes that the proposed change could create efficiencies for member organizations by enabling them to send orders that they wish to route to an alternate destination through the Exchange, thereby leveraging order entry protocols and specifications already configured for their interactions with the Exchange. The Exchange notes that Directed Orders designated to route to an algorithm would otherwise operate identically to Directed Orders that are currently eligible to be routed to an ATS selected by the member organization entering the order (with the changes described in this filing). The Exchange further believes that the Directed Order would continue to provide functionality similar to order types with specific execution instructions (such as the Auction-Only Order defined in NYSE Rule 7.31(c)) or routing instructions (such as Primary Only Orders that route to the primary market, as available on the Exchange's affiliated equities exchanges).[6]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update.[7] Subject to approval of this proposed rule change, the Exchange will implement the proposed change at the earliest in the third quarter of 2024 or at the latest in the first quarter of 2025.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade because the Directed

[5] The Exchange believes that this proposed rule change could be particularly beneficial for smaller member organizations that cannot, for various reasons including cost, connect to multiple algorithm providers on their own.

[6] *See* NYSE American LLC (''NYSE American'') Rule 7.31E(f)(1); NYSE Arca, Inc. (''NYSE Arca'') Rule 7.31–E(f)(1); NYSE Chicago, Inc. (''NYSE Chicago'') Rule 7.31(f)(1); NYSE National, Inc. (''NYSE National'') Rule 7.31(f)(1). NYSE American, NYSE Arca, NYSE Chicago, and NYSE National also offer variations of the Primary Only Order, including the Primary Only Until 9:45 Order, which is a Limit or Inside Limit Order that, on arrival and until 9:45 a.m. Eastern Time, routes to the primary listing market, and the Primary Only Until 3:55 Order, which is a Limit or Inside Limit Order entered on the Exchange until 3:55 p.m. Eastern Time, after which time the order is cancelled on the Exchange and routed to the primary listing market. *See* NYSE American Rules 7.31E(f)(2) and (f)(3); NYSE Arca Rules 7.31–E(f)(2) and (f)(3); NYSE Chicago Rules 7.31(f)(2) and (f)(3); NYSE National Rules 7.31(f)(2) and (f)(3). The Exchange further notes similarities between the Directed Order and various order types and routing options offered by other equities exchanges. *See, e.g.,* Nasdaq Stock Market LLC (''Nasdaq''), Equity 4, Equity Trading Rules, Rule 4758(a)(ix) (defining the Nasdaq Directed Order as an order designed to use a routing strategy under which the order is directed to an automated trading center other than Nasdaq, as directed by the entering party, without checking the Nasdaq Book); Cboe EDGX Exchange, Inc. (''EDGX'') Rules 11.8(c)(7) (defining the Routing/Directed ISO order type as an ISO that bypasses the EDGX system and is immediately routed by EDGX to a specified away trading center for execution) and 11.11(g)(2) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed); Cboe EDGA Exchange, Inc. (''EDGA'') Rules 11.8(c)(7) (defining the Routing/Directed ISO order type as an ISO that bypasses the EDGA system and is immediately routed by EDGA to a specified away trading center for execution) and 11.11(g)(2) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed); Cboe BZX Exchange, Inc. (''BZX'') Rules 11.13(b)(3)(D) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed) and 11.13(b)(3)(F) (defining the Directed ISO routing option, under which an ISO order would bypass the BZX system and be sent to a specified away trading center); Cboe BYX Exchange, Inc. (''BYX'') Rules 11.13(b)(3)(D) (providing for the DRT routing option, in which an order is routed to an alternative trading system as instructed) and 11.13(b)(3)(F) (defining the Directed ISO routing option, under which an ISO order would bypass the BYX system and be sent to a specified away trading center). The Exchange also believes that the Directed Order would provide functionality similar to the C–LNK routing strategy formerly offered by EDGA, in which C–LNK orders bypassed EDGA's local book and routed directly to a specified Single Dealer Platform destination. *See* Securities Exchange Act Release No. 82904 (March 20, 2018), 83 FR 12995 (March 26, 2018) (SR–CboeEDGA–2018–004) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand an Offering Known as Cboe Connect To Provide Connectivity to Single-Dealer Platforms Connected to the Exchange's Network and To Propose a Per Share Executed Fee for Such Service).

[7] The Exchange will provide information regarding the algorithm(s) to which a Directed Order may be designated to route in technical specifications and/or by Trader Update.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

Order, as proposed, would offer member organizations access to additional execution tools and trading opportunities by permitting them to designate orders submitted to the Exchange to be routed directly to a specified algorithm for execution. In particular, the Exchange believes that amending the Directed Order to include routing to an algorithm would provide greater choice and flexibility for member organizations and their customers. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market by offering member organizations a technology solution that would provide them with the option to send orders that they wish to route to an alternate destination for execution through the Exchange, thereby promoting operational efficiencies through leveraging their existing protocols and specifications for Exchange connectivity. Finally, the Exchange notes that the proposed functionality is not novel as a Directed Order to an algorithm would otherwise function in the same way as the existing Directed Order to an ATS (with certain changes as proposed in this filing to extend increased flexibility to all Directed Orders), and the proposed change would simply facilitate member organizations' existing ability to direct orders to be executed via an algorithm.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change to the rules governing Directed Orders would promote competition because it would enhance an order type on the Exchange that would provide access to additional execution tools and trading opportunities for market participants.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–40. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–NYSE–2024–40 and should be submitted on or before August 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16940 Filed 7–31–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35287]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 26, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'')

ACTION: Notice of Applications for Deregistration under section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2024. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on August 21, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

[10] 17 CFR 200.30–3(a)(12).

notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Emerge ETF Trust [File No. 811–23797]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 14, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $34,485.92 incurred in connection with the liquidation were paid by the applicant. Applicant also has retained approximately $6,990.73 for the purpose of paying outstanding liabilities.

Filing Dates: The application was filed on September 15, 2023 and amended on July 19, 2024.

Applicant's Address: 500 Pearl Street, Suite 740, Buffalo, New York 14202.

Morgan Stanley California Tax-Free Daily Income Trust [File No. 811–05554]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 15, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $100,000 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on July 18, 2024.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 1585 Broadway, New York, NY 10036.

Morgan Stanley Tax-Free Daily Income Trust [File No. 811–03031]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 15, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $100,000 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on July 18, 2024.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 1585 Broadway, New York, NY 10036.

Morgan Stanley Variable Investment Series [File No. 811–03692]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 28, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $96,000 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on July 18, 2024.

Applicant's Address: c/o Morgan Stanley Investment Management Inc., 1585 Broadway, New York, NY 10036.

Virtus Stone Harbor Emerging Markets Total Income Fund [File No. 811–22716]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Virtus Stone Harbor Emerging Markets Income Fund, and on December 15, 2023 made a final distribution to its shareholders based on net asset value. Expenses of $475,000 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Dates: The application was filed on June 5, 2024 and amended on July 22, 2024.

Applicant's Address: 101 Munson Street, Greenfield, Massachusetts 01301–9683.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16905 Filed 7–31–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100607; File No. SR–MRX–2024–29]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 3

July 26, 2024.

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 July 24, 2024, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

MRX proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3, Table 2 related to Crossing Orders. Specifically, the Exchange proposes to amend the Regular and Complex Order Non-Penny Symbol Fees for Crossing Orders.[4]

Options 7, Section 3—Table 2

Today, Options 7, Section 3, Table 2 applies to Regular and Complex Crossing Orders. Today, the Exchange assesses the following Regular and Complex Crossing Order Fees in Penny and Non-Penny Symbols: [5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 15, 2024, the Exchange withdrew SR–MRX–2024–20 and replaced it with SR–MRX–2024–26. On July 24, 2024, the Exchange withdrew SR–MRX–2024–26 and replaced it with this filing.

[4] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (''PIM'') or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders. *See* Options 7, Section 1(c).

[5] Footnotes in the Pricing Schedule are not displayed in this table.

REGULAR AND COMPLEX CROSSING ORDERS

Market participant	Fee for crossing orders	Fee for responses to crossing orders	Break-up rebate for facilitation mechanism and solicited order mechanism
Penny Symbols			
Market Maker	$0.02	$0.50	N/A
Non-Nasdaq MRX Market Maker (FarMM)	0.02	0.50	N/A
Firm Proprietary/Broker-Dealer	0.02	0.50	N/A
Professional Customer	0.02	0.50	N/A
Priority Customer	0.00	0.50	(0.30)
Non-Penny Symbols			
Market Maker	0.20	1.10	
Non-Nasdaq MRX Market Maker (FarMM)	0.20	1.10	
Firm Proprietary/Broker-Dealer	0.20	1.10	
Professional Customer	0.20	1.10	
Priority Customer	0.00	1.10	

At this time, the Exchange proposes to amend Table 2 of Options 7, Section 3 to decrease the Non-Penny Symbol Non-Priority Customer [6] Fees for Crossing Orders from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism,[7] Complex Facilitation Mechanism,[8] Solicitation Mechanism,[9] Complex Solicitation Mechanism [10] and Block Orders.[11] A Priority Customer would continue to be assessed no Regular and Complex Order Fee for Crossing Orders in Non-Penny Symbols.

Fees apply to the originating and contra-side orders, except for PIM Orders and Qualified Contingent Cross (''QCC'') Orders, Complex QCC Orders, QCC with Stock Orders and Complex QCC with Stock Orders. The Fee for Crossing Orders for QCC Orders, Complex QCC Orders, QCC with Stock Orders and Complex QCC with Stock Orders is $0.20 per contract for Non-Priority Customer orders in Penny and Non-Penny Symbols. Priority Customer orders are not assessed a fee for Crossing Orders. Regular and Complex PIM Orders are subject to separate pricing in Part A of Options 7, Section 3.

The Exchange believes that lowering the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols will attract additional Crossing Orders to MRX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes are reasonable in several respects. 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 fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [14]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity.

Options 7, Section 3—Table 2

The Exchange's proposal to amend Table 2 of Options 7, Section 3 to decrease the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism, Complex

[6] ''Non-Priority Customers'' include Market Makers, Non-Nasdaq GEMX Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers. *See* Options 7, Section 1(c).

[7] The Facilitation Mechanism is described in Options 3, Section 11(b).

[8] The Facilitation Mechanism is described in Options 3, Section 11(c).

[9] The Solicitation Mechanism is described in Options 3, Section 11(d).

[10] The Solicitation Mechanism is described in Options 3, Section 11(e).

[11] Block Orders are single-leg orders in single-sided auctions. *See* Options 3, Section 11(a).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders is reasonable because the Exchange would be reducing the originating and contra-side order fees to enter orders in these auction mechanisms to encourage market participants to enter additional Crossing Orders on MRX. The Exchange would continue to assess no Regular and Complex Order Non-Penny Symbol Priority Customer Fee for Crossing Orders.

The Exchange's proposal to amend Table 2 of Options 7, Section 3 to decrease the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders is equitable and not unfairly discriminatory as all Non-Priority Customers that enter orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders would be uniformly assessed these lower Non-Penny Symbol fees. A Priority Customer would continue to be assessed no Regular and Complex Order Fee for Crossing Orders in Non-Penny Symbols. Unlike other market participants, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow for other market participants, to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 7, Section 3—Table 2

In terms of intra-market competition, the Exchange's proposal to amend Table 2 of Options 7, Section 3 to decrease the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders does not impose an undue burden on competition as all Non-Priority Customers that enter orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders would be uniformly assessed these lower Non-Penny Symbol fees. Assessing lower Non-Penny Symbol Non-Priority Customer Fees for Crossing Orders and not lowering the Non-Penny Symbol Non-Priority Customer Responses for Crossing Orders does not impose an undue burden on competition.

Today, a differential exists as between the Fees for Crossing Orders (the fees that apply to the originating and contra-side orders) and the Responses for Crossing Orders, the Exchange does not believe that widening this differential burdens competition because lowering these originating and contra-side order fees encourages Members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Non-Penny Symbols. Members responding to these auctions would continue to be assessed $1.10 per contract Non-Penny Symbol fee, which is the same fee assessed today for Members removing liquidity from the order book. The Exchange would continue to assess Members the same fees to remove liquidity whether they are removing that liquidity from the order book or one of the aforementioned auctions. The liquidity the Exchange is able to attract to MRX in the form of these auctions provides other Members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence.

A Priority Customer would continue to be assessed no Regular and Complex Order Fee for Crossing Orders in Non-Penny Symbols. Unlike other market participants, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow for other market participants, to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2024–29 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–MRX–2024–29. 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

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–MRX–2024–29 and should be submitted on or before August 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16938 Filed 7–31–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100610; File Nos. SR–NYSEARCA–2024–45; SR–CboeBZX–2023–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Pando Asset Spot Bitcoin Trust

July 26, 2024.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] each of NYSE Arca, Inc. (''NYSE Arca'') and Cboe BZX Exchange, Inc. (''BZX'', and together with NYSE Arca, the ''Exchanges'') filed with the Securities and Exchange Commission (''Commission'') proposed rule changes to list and trade shares of the following. NYSE Arca proposes to list and trade shares of the Grayscale Bitcoin Mini Trust[3] under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares); and BZX proposes to list and trade shares of the Pando Asset Spot Bitcoin Trust[4] under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares). Each filing was subject to notice and comment.[5]

Each of the foregoing proposed rule changes, as modified by their respective amendments, is referred to herein as a ''Proposal'' and together as the ''Proposals.'' Each trust described in a Proposal is referred to herein as a ''Trust'' and together as the ''Trusts.'' As described in more detail in the Proposals' respective amended filings,[6] each Proposal seeks to list and trade shares of a Trust that would hold spot bitcoin,[7] in whole or in part.[8] This order approves the Proposals.[9]

II. Discussion and Commission Findings

After careful review, the Commission finds that the Proposals are consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Exchange Act,[11] which requires, among other things, that the Exchanges' rules be designed to ''prevent fraudulent and manipulative acts and practices'' and, ''in general, to protect investors and the public interest;'' and with Section 11A(a)(1)(C)(iii) of the Exchange Act,[12] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

A. Exchange Act Section 6(b)(5)

The Commission has explained that one way an exchange that lists bitcoin-based exchange-traded products (''ETPs'') can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets.[13] Such an agreement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust Under NYSE Arca Rule 8.201–E, Commodity-Based Trust Shares, Securities Exchange Act Release No. 100290 (June 6, 2024), 89 FR 49931 (June 12, 2024) (SR–NYSEARCA–2024–45) (''Grayscale Filing'').

[4] *See* Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Pando Asset Spot Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 100420 (June 25, 2024), 89 FR 54555 (July 1, 2024) (SR–CboeBZX–2023–101) (''Pando Filing'').

[5] The Commission did not receive any comments on SR–NYSEARCA–2024–45. Comments received on SR–CboeBZX–2023–101 are available at *https://www.sec.gov/comments/sr-cboebzx-2023-101/srcboebzx2023101.htm.*

[6] *See supra* notes 3–4.

[7] Bitcoins are digital assets that are issued and transferred via a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''Bitcoin blockchain.'' The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions.

[8] Each Trust proposes to hold spot bitcoin. The Pando Asset Spot Bitcoin Trust also proposes to hold cash and cash equivalents. *See* Pando Filing at 54563.

[9] The Pando Filing is being approved on an accelerated basis. *See infra* Section III.

[10] In approving the Proposals, the Commission has considered the Proposals' impacts on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[13] *See, e.g.,* Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR–NYSEARCA–2021–90; SR–NYSEARCA–2023–44; SR–NYSEARCA–2023–58; SR–NASDAQ–2023–016; SR–NASDAQ–2023–019; SR–CboeBZX–2023–028; SR–CboeBZX–2023–038; SR–CboeBZX–2023–040; SR–CboeBZX–2023–042; SR–CboeBZX–2023–044; SR–CboeBZX–2023–072) (''Spot Bitcoin ETP Approval Order''); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR–NYSEARCA–2021–53). The Commission has provided an illustrative definition for ''market of significant size'' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market. *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and

Continued

[17] 17 CFR 200.30–3(a)(12).

would assist in detecting and deterring fraud and manipulation related to that underlying asset.

The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.[14] A listing exchange could, alternatively, demonstrate that ''other means to prevent fraudulent and manipulative acts and practices will be sufficient'' to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.[15] In the Spot Bitcoin ETP Approval Order, the Commission determined that having a comprehensive surveillance-sharing agreement with a U.S.-regulated market that, based on evidence from robust correlation analysis, is consistently highly correlated with the ETPs' underlying assets (spot bitcoin) constituted ''other means'' sufficient to satisfy the Exchange Act Section 6(b)(5) standard.[16] Specifically, given the consistently high correlation between the bitcoin futures market of the Chicago Mercantile Exchange (''CME'') and a sample of spot bitcoin markets—confirmed by the Commission through robust [17] correlation analysis using data at hourly, five-minute, and one-minute intervals—the Commission was able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Commission was able to conclude that the comprehensive surveillance-sharing agreement among the listing exchanges and the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals considered in the Spot Bitcoin ETP Approval Order.

With respect to the present Proposals, the structure of the Trusts, the terms of their operation and the trading of their shares, and the representations in their respective amended filings are substantially similar to those of the proposals considered in the Spot Bitcoin ETP Approval Order.[18] In addition, the Commission finds that the spot bitcoin market continues to be consistently highly correlated with the CME bitcoin futures market.[19] As such, based on the record before the Commission, including the Commission's correlation analysis, the Commission is able to conclude that the Exchanges' comprehensive surveillance-sharing agreement with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.

B. Exchange Act Section 11A(a)(1)(C)(iii)

Each Proposal sets forth aspects of its proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.[20] This includes commitments regarding: the availability via the Consolidated Tape Association of quotation and last-sale information for the shares of each Trust; the availability on the websites of each Trust of certain information related to the Trusts, including net asset values; the dissemination of intra-day indicative values by one or more major market data vendors, updated every 15 seconds throughout the Exchanges' regular trading hours; the Exchanges' surveillance procedures and ability to obtain information regarding trading in the shares of the Trusts; the conditions under which the Exchanges would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each Trust.[21] In addition, in each Proposal, the applicable Exchange deems the shares of the applicable Trust to be equity securities, thus rendering trading in such shares subject to that Exchange's existing rules governing the trading of equity securities.[22] Further, the applicable listing rules of each Exchange require that all statements and representations made in its filing regarding, among others, the description of the applicable Trust's holdings, limitations on such holdings, and the applicability of that Exchange's listing rules specified in the filing, will constitute continued listing requirements.[23] Moreover, each Proposal states that: its sponsor has represented to the applicable Exchange that it will advise that Exchange of any failure to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, that Exchange will monitor for compliance with the continued listing requirements; and if the applicable Trust is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.[24]

The Commission therefore finds that the Proposals, as with other ETPs that the Commission has approved,[25] are reasonably designed to promote fair disclosure of information that may be necessary to price the shares of the Trusts appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trusts'

Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37594 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order'').

[14] *See, e.g.,* Winklevoss Order at 37580; Spot Bitcoin ETP Approval Order at 3009.

[15] *See* Spot Bitcoin ETP Approval Order at 3009 (quoting Winklevoss Order at 37580).

[16] *See id.* at 3009–11.

[17] The Commission stated that the ''robustness'' of its correlation analysis rested on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the Commodity Futures Trading Commission, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period. *See id.* at 3010 n.38.

[18] *See also infra* Section II.B.

[19] The Commission examined correlation between the CME bitcoin futures market and the Coinbase and Kraken spot bitcoin trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Bitcoin ETP Approval Order (*see* Spot Bitcoin ETP Approval Order at 3010 n.35), for the period from March 1, 2021, to March 29, 2024. The correlation between the CME bitcoin futures market and this subset of spot bitcoin platforms for the full sample period is no less than 98.3 percent using data at an hourly interval, 89.7 percent using data at a five-minute interval, and 73.9 percent using data at a one-minute interval. The rolling three-month correlation results range between 91.9 and 99.3 percent using data at an hourly interval, 76.6 and 94.9 percent using data at a five-minute interval, and 62.7 and 83.3 percent using data at a one-minute interval.

[20] *See, e.g.,* Spot Bitcoin ETP Approval Order at 3011; Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR–NYSEARCA–2009–94) (Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFS Palladium Trust); Securities Exchange Act Release No. 94518 (Mar. 25, 2022), 87 FR 18837 (Mar. 31, 2022) (SR–NYSEARCA–2021–65) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares); Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (SR–NYSEARCA–2023–70; SR–NYSEARCA–2024–31; SR–NASDAQ–2023–045; SR–CboeBZX–2023–069; SR–CboeBZX–2023–070; SR–CboeBZX–2023–087; SR–CboeBZX–2023–095; SR–CboeBZX–2024–018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

[21] *See* Grayscale Filing at 49941–43; Pando Filing at 54564–67.

[22] *See* Grayscale Filing at 49942; Pando Filing at 54566.

[23] *See* NYSE Arca Rule 8.201–E(e)(2)(vii); BZX Rule 14.11(a).

[24] *See* Grayscale Filing at 49943; Pando Filing at 54567.

[25] *See supra* note 20.

portfolios, and to ensure fair and orderly markets for the shares of the Trusts.

C. Comments

Some commenters state that bitcoin is a volatile asset and approval of spot bitcoin ETPs could amplify that volatility,[26] making spot bitcoin ETPs unsuitable for some retail investors.[27] The Commission finds that the Proposals are consistent with the Section 6(b)(5) requirement that the Exchanges' rules be designed to protect investors and the public interest because, in addition to the factors discussed in Section II.A and II.B above, existing rules and standards of conduct would apply to recommending and advising investments in the shares of the Trusts. For example, when broker-dealers recommend ETPs to retail customers, Regulation Best Interest (''Reg BI'') would apply.[28] Reg BI requires broker-dealers to, among other things, exercise reasonable diligence, care, and skill when making a recommendation to a retail customer to: (1) understand potential risks, rewards, and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; and (2) have a reasonable basis to believe the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile.[29] In addition, investment advisers have a fiduciary duty under the Investment Advisers Act of 1940 comprised of a duty of care and a duty of loyalty. These obligations require the adviser to act in the best interest of its client and not subordinate its client's interest to its own.[30]

Commenters also raised concerns with bitcoin's susceptibility to fraud and manipulation,[31] including wash trading,[32] and with custody arrangements and susceptibility of the Trusts' bitcoin to hacks and theft.[33] The Commission acknowledges commenters' concerns. Pursuant to Section 19(b)(2) of the Exchange Act, however, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act.[34] For the reasons described above, the Commission finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)[35] that the Exchanges' rules be designed to ''prevent fraudulent and manipulative acts and practices.''[36]

Commenters also address, among other things: the use of bitcoin for illicit activities,[37] such as sanctions evasion,[38] money-laundering,[39] and terrorist finance;[40] the environmental impacts of bitcoin mining;[41] the potential impacts of spot bitcoin ETP approvals on lower-income countries' financial development;[42] on democracy, human rights, and civil liberties;[43] and on inflation;[44] and the benefits of blockchain technology.[45] Ultimately, however, for the reasons described above, the Commission is approving the Proposals because it finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)[46] that the Exchanges' rules be designed to ''prevent fraudulent and manipulative acts and practices.''

III. Accelerated Approval of The Pando Filing

The Commission finds good cause to approve the Pando Filing prior to the 30th day after the date of publication of notice of its Amendment No. 1[47] in the **Federal Register**. The amendment clarified the description of its Trust; further described the terms of the Trust; and conformed various representations in the amended filing to BZX's listing standards and to representations that exchanges have made for other ETPs that the Commission has approved.[48] The amended filing is now substantially similar to other spot bitcoin ETPs that the Commission has approved,[49] and as discussed above in Section II.A, the spot bitcoin market and the CME bitcoin futures market remain consistently highly correlated. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[50] to approve the Pando Filing on an accelerated basis.

IV. Conclusion

This approval order is based on all of the Exchanges' representations and descriptions in their respective

[26] *See, e.g.,* Letter from Gaurav Mehra, dated Dec. 22, 2023, regarding SR–CboeBZX–2023–101 (''Mehra Letter'').

[27] *See, e.g.,* Letter from Shweta Gulati, dated Jan. 3, 2024, regarding SR–CboeBZX–2023–101 (''Gulati Letter'').

[28] Exchange Act rule 15*l*-1(a).

[29] Exchange Act rules 15*l*-1(a)(2)(ii)(A) and (B). Separately, under Reg BI's Conflict of Interest Obligation, broker-dealers must establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, identify and disclose or eliminate all conflicts of interest associated with a recommendation and mitigate conflicts of interest at the associated person level. *See* Exchange Act rules 15*l*-1(a)(2)(iii)(A) and (B). To the extent that broker-dealers recommend ETPs to customers who are not retail customers covered by Reg BI, FINRA Rule 2111 requires, in part, that a member broker-dealer or associated person ''have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [broker-dealer] or associated person to ascertain the customer's investment profile.''

[30] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019), at 33671; Investment Company Act Release No. 34084 (Nov. 2, 2020), 85 FR 83162 (Dec. 21, 2020), at 83217 (discussing the best interest standard of conduct for broker-dealers and the fiduciary obligations of investment advisers in the context of all ETPs).

[31] *See, e.g.,* Gulati Letter; Letter from Prashant Saksena, dated Jan. 1, 2024, regarding SR–CboeBZX–2023–101 (''Prashant Letter''); Letter from Swatantra G., dated Dec. 28, 2023, regarding SR–CboeBZX–2023–101; Letter from Harish Reddy, dated Jan. 4, 2024, regarding SR–CboeBZX–2023–101; Letter from Snigdha Guha, dated Jan. 6, 2024, regarding SR–CboeBZX–2023–101.

[32] *See, e.g.,* Mehra Letter.

[33] *See, e.g.,* Prashant Letter; Letter from Melissa Hayes, dated Dec. 26, 2023, regarding SR–CboeBZX–2023–101.

[34] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C). The Commission does not apply a ''cannot be manipulated'' standard; rather, the Commission examines whether a proposal meets the requirements of the Exchange Act. *See, e.g.,* Winklevoss Order at 37582. The Commission does not understand the Exchange Act to require that a particular product or market be immune from manipulation. Rather, the inquiry into whether the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest, has long focused on the mechanisms in place for the detection and deterrence of fraud and manipulation.

[35] 15 U.S.C. 78f(b)(5).

[36] *See also* Spot Bitcoin ETP Approval Order at 3013 (discussing custody concerns raised by commenters).

[37] *See, e.g.,* Letter from Arun Gogia, dated Dec. 30, 2023, regarding SR–CboeBZX–2023–101 (''Gogia Letter''); Letter from Dhiraj Kafle, dated Jan. 2, 2024, regarding SR–CboeBZX–2023–101; Letter from Bhrigu Wadhwa, dated Jan. 2, 2024, regarding SR–CboeBZX–2023–101; Letter from Vir Vijay Singh, dated Jan. 4, 2024, regarding SR–CboeBZX–2023–101.

[38] *See, e.g.,* Letter from Borislava Pupaza, dated Dec. 29, 2023, regarding SR–CboeBZX–2023–101 (''Pupaza Letter''); Letter from Amit Budhiraja, dated Jan. 2, 2024, regarding SR–CboeBZX–2023–101 (''Budhiraja Letter''); Letter from Anurag Saksena, dated Jan. 2, 2024, regarding SR–CboeBZX–2023–101 (''Anurag Letter'').

[39] *See, e.g.,* Letter from Vipin Agarwal, dated Jan. 2, 2024, regarding SR–CboeBZX–2023–101.

[40] *See, e.g.,* Letter from Sameer Tiwari, dated Jan. 5, 2024, regarding SR–CboeBZX–2023–101.

[41] *See, e.g.,* Gogia Letter.

[42] *See, e.g.,* Letter from Mohit Gupta, dated Dec. 29, 2023, regarding SR–CboeBZX–2023–101.

[43] *See, e.g.,* Pupaza Letter; Budhiraja Letter; Anurag Letter.

[44] *See, e.g.,* Gulati Letter.

[45] *See, e.g.,* Letter from Miguel A. Suro Carrasco, dated Jan. 3, 2024, regarding SR–CboeBZX–2023–101.

[46] 15 U.S.C. 78f(b)(5).

[47] *See supra* note 4.

[48] *See also supra* Section II.B.

[49] *See* Spot Bitcoin ETP Approval Order.

[50] 15 U.S.C. 78s(b)(2).

amended filings, which the Commission has carefully evaluated as discussed above.[51] For the reasons set forth above, including the Commission's correlation analysis, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,[52] that the Proposals are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.[53]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[54] that the Grayscale Filing (SR–NYSEARCA–2024–45) be, and hereby is, approved; and that the Pando Filing (SR–CboeBZX–2023–101) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16941 Filed 7–31–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100608; File No. SR–ISE–2024–31]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 2, Sections 5, 6 and 10; Options 3, Sections 7 and 17; and Options 4, Section 5

July 26, 2024.

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 July 15, 2024, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2, Sections 5, 6 and 10; Options 3, Sections 7 and 17; and Options 4, Section 5.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 Options 2, Section 5, Market Maker Quotations, to amend intra-day quoting requirements. The Exchange proposes to amend Options 2, Section 6, Market Maker Orders, and Options 3, Section 7(g), Reserve Orders, to bring additional clarity to the types of orders available to Market Makers. The Exchange proposes to amend Options 2, Section 10, Preferenced Orders, to define various terms related to Preferenced Orders and harmonize the rule text to other Nasdaq affiliated markets. The Exchange proposes to amend Options 3, Section 17, Kill Switch, to indicate the configurations available in the Kill Switch. Finally, the Exchange proposes amendments in Options 4, Section 5, to conform rule text and amend numbering. Each change is described below.

Options 2, Section 5

The Exchange proposes to amend the quoting requirements of a Competitive Market Maker and a Preferred CMM in Options 2, Section 5.

With respect to a Competitive Market Maker, today, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.

The Exchange proposes to amend the quoting obligations for a Competitive Market Maker by requiring a Competitive Market Maker to enter quotations each day in the options classes to which it is appointed. Specifically, the Exchange proposes to require in proposed Options 2, Section 5(e)(1) that,

> Competitive Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Competitive Market Maker are not required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and exchange-traded funds (''ETFs'') or with an expiration of twelve months or greater for index options.

As is the case today, Competitive Market Makers may continue to choose to quote a Quarterly Options Series, any adjusted options series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index option, in addition to regular series in the options class. Such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in Options 2, Section 5(e)(1). The Exchange believes that requiring a Competitive Market Maker to quote each day will increase liquidity on the Exchange.

Additionally, the Exchange proposes to amend the quoting requirements for a Preferred CMM. Today, the last sentence of Options 2, Section 5(e) provides, ''A Competitive Market Maker who receives a Preferenced Order, as described in Options 2, Section 10 and

[51] *See supra* notes 3–4. In addition, the shares of the Trust in SR–NYSEARCA–2024–45 must comply with the requirements of NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) to be listed and traded on NYSE Arca on an initial and continuing basis; and the shares of the Trust in SR–CboeBZX–2023–101 must comply with the requirements of BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) to be listed and traded on BZX on an initial and continuing basis.

[52] 15 U.S.C. 78s(b)(2).

[53] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k–1(a)(1)(C)(iii).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Options 3, Section 10, (''Preferred CMM'') shall be held to the standard of a Preferred CMM in the options series of any options class in which it receives the Preferenced Order.'' Further, today, Options 2, Section 5(e)(3) provides,

Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferenced in an assigned options class once the Member receives a Preferenced Order in any option class in which they are assigned and shall be considered preferenced for that day in all series for that option class in which it received the Preferenced Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to this Options 2, Section 4(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph. A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Options 3, Section 10(c)(1)(C), only if it complies with the heightened 90% quoting requirement contained in this paragraph.

Today, Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member is considered preferenced in an assigned options class once the Member receives a Preferenced Order in any option class in which they are assigned and shall be considered a Preferred CMM/Preferred PMM for that day in all series for that option class in which it received the Preferenced Order. Today, the Member must be quoting at the NBBO at the time the Preferenced Order is received and must execute the order. If a CMM does not receive a Preferenced Order, it will not be considered a Preferred CMM in that options class and any quotations in that options class by the CMM will not be considered when determining whether it met its Preferred CMM quoting obligations.

At this time, the Exchange proposes to utilize the term ''Preferred Market Maker'' instead of ''Preferred CMM'' as both Competitive Market Makers and Primary Market Makers are Preferred Market Makers pursuant to proposed renumbered Options 2, Section 10(a)(1)(iii).[3] Also, the Exchange proposes replacing the word ''receives'' with the word ''executes'' in Options 2, Section 5(e). The proposed new sentence would provide, ''A Market Maker who executes a Preferenced Order, as described in Options 2, Section 10 and Options 3, Section 10, (''Preferred Market Maker''), shall be held to the standard of a Preferred Market Maker among all options series of any options class in which it executes the Preferenced Order.'' The Exchange proposes to amend this sentence to specify that the 90% quoting obligation described herein would be among all options series instead of in each assigned option series.

Additionally, the Exchange proposes amendments to Options 2, Section 5(e)(3) to utilize the term ''Preferred Market Maker'' and amend the quoting obligation as stated in the last sentence of Options 2, Section 5(e) to require that the Preferred Market Maker collectively meet the 90% quoting obligation among all options series in which the Preferred Market Maker executes a Preferenced Order. The Exchange proposes to replace the word ''receives'' with ''executes.'' As amended, Options 2, Section 5(e)(3) would state,

Preferred Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. A Preferred Market Maker has the ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferenced Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferenced.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a participation entitlement in the Quarterly Options Series, the Adjusted Options Series, and an options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferenced Order, only if it complies with the heightened 90% quoting requirement.

The Exchange is amending the Preferred Market Maker quoting obligation to first require that a Market Maker indicate interest in the program with the Exchange.[4] Once the Market Maker indicates it would like to receive a Preferenced Order, that Market Maker would be obligated, collectively, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis, except that a Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

A Preferred Market Maker has an ongoing 90% quoting obligation, on a daily basis, from the time a Preferred Market Maker executes its first Preferenced Order in the option in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that it is no longer preferenced. The Exchange proposes to replace the word ''receives'' with ''executes'' in the Options 2, Section 5(e) and (e)(3) rule text because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferenced Order. Market Makers are unaware if an order is preferenced to them until such time as they execute the Preferenced Order and receive their enhanced allocation. Of note, A Market Maker must be quoting at the NBBO at the time the Preferenced Order is received to be allocated.

A Preferred Market Maker shall not be required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options and would receive a

[3] Renumbered Options 2, Section 10 (a)(1)(iii) states that a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

[4] The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferenced Orders.

participation entitlement in the Quarterly Option Series, the Adjusted Option Series, and an option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options for the Preferenced Order, only if it complies with the heightened 90% quoting requirement.

To make clear the manner in which the quoting obligations will be applied, below are some examples.

Example 1

- Assume a Competitive Market Maker was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Competitive Market Maker had previously executed a Preferenced Order and executes a Preferenced Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferenced Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferenced. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order each day, regardless of whether the Preferred Market Maker executed a Preferenced Order that day.

Obligations

This Competitive Market Maker is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options series are open for trading among AAPL, SPY, and ORCL to fulfill its Competitive Market Maker obligation.

Separately, this Competitive Market Maker would be obligated, separate and apart from its Competitive Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among NFLX and ADBE to fulfill its Preferred Market Maker Obligation.

This Competitive Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Competitive Market Maker or Preferred Market Maker requirements.

Example 2

- Assume a Primary Market Maker [5] was assigned in options overlying AAPL, SPY, NFLX, ORCL and ADBE.
- Assume this Primary Market Maker had previously executed a Preferenced Order and executes a Preferenced Order in NFLX and ADBE on February 27, 2024.
- The Preferred Market Maker obligation is a daily obligation once triggered and continues until the Preferred Market Maker notifies the Exchange that it no longer desires to be a part of the Preferenced Order program.
- Moreover, on February 28, 2024 and each day thereafter the Preferred Market Maker is required to provide two-sided quotations in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferenced. Therefore, the Preferred Market Maker would be required to quote at 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order each day, regardless of whether the Preferred Market Maker executed a Preferenced Order that day.

[5] Pursuant to Options 2, Section 5(e), a Member is required to meet each market making obligation separately. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Primary Market Maker, will be counted toward the requirement to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as ISE may announce. Quotes submitted through the Specialized Quote Feed interface, utilizing badges and options series assigned to a Competitive Market Maker, will be counted toward the requirement to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as ISE may announce. Today, a Primary Market Maker who executes a Preferenced Order, as described in Options 2, Section 10 and Options 3, Section 10, (''Preferred PMM'') shall be held to the standard of a Preferred PMM in the options series of any options class in which it receives the Preferenced Order.

Obligations

This Primary Market Maker, associated with the same Options Participant, is collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among AAPL, SPY, and ORCL to fulfill its Primary Market Maker obligation.[6]

Separately, this Primary Market Maker would be obligated, separate and apart from its Primary Market Maker obligations described in this example, to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, among NFLX and ADBE to fulfill its Preferred Market Maker obligation.

A Primary Market Maker would not be required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options in AAPL, SPY, NFLX, ORCL and ADBE when meeting its Primary Market Maker or Preferred Market Maker requirements.

The Exchange proposes to amend Options 2, Section 5(e)(5) that currently states, ''ISE Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on a monthly basis.'' The Exchange proposes to instead provide that ''For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis.'' The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

The Exchange will implement the amendments to Options 2, Section 5 on or before April 30, 2025.[7]

Options 2, Section 6 and Options 3, Section 7

Options 2, Section 6, Market Maker Orders, provides Market Makers with

[6] *See* Options 2, Section 4(j)(1).

[7] The Exchange will provide Members with notification of these changes in an Options Regulatory Alert and the Exchange will announce the implementation date in a second Options Regulatory Alert.

information as to the types of orders that may be entered on the Exchange. The current rule text at Options 2, Section 6(a) provides that, in options classes in which the Market Maker is appointed, a Market Maker may enter all order types defined in Options 3, Section 7 in the options classes to which they are appointed under Options 2, Section 3, except Reserve Orders and Customer Cross Orders. Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.

With the changes proposed to the Competitive Market Maker quoting requirements, the Exchange is also removing the last sentence of Options 2, Section 6 which provides, ''Competitive Market Makers shall comply with the provisions of Options 2, Section 5(e)(1) upon the entry of such orders if they were not previously quoting in the series.'' Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5.

The Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. The Exchange proposes to modify the current rule text so that it will read clearly and harmonize with rule text on Phlx and BX at Options 2, Section 6. The Exchange proposes to first note that, today, Market Makers may enter all Complex Order types. To make this clear in the rule text, the Exchange proposes to cite to Options 3, Section 14, which governs Complex Orders, in addition to citing to Options 3, Section 7 which governs single-leg orders. Further, the Exchange proposes to remove the current rule text in Options 3, Section 6(b)(1) as the language is superfluous. In its place, the Exchange proposes to amend the text in Options 2, Section 6(a) to remove the title ''Options Classes to Which Appointed'' and add ''non-appointed'' to the paragraph so that it reflects all the order types for Market Makers in both appointed and non-appointed classes. The current language in Options 2, Section 6(b)(1) provides,

> A Market Maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the Market Maker is not appointed under Options 2, Section 3, except for Reserve Orders, provided that:
>
> (i) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Options 2, Section 4(b)(4); and
>
> (ii) the Market Maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

The Exchange believes that the rule will read more clearly by adding non-appointed to Options 2, Section 6(a) and removing current Options 2, Section 6(b)(1) which says the same thing. Today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Further Options 2, Section 6(b)(1)(i) is a requirement provided for in Options 2, Section 4(b)(4) and does not need to be repeated in this rule. Finally, Options 2, Section 6(b)(1)(ii) is circular because Options 2, Section 6(a) allows Market Makers to enter all orders in appointed options classes except for Reserve Orders which is the same restriction applicable to non-appointed options classes.

The Exchange also proposes to amend Options 3, Section 7, Types of Orders and Order and Quote Protocols. The Exchange proposes to amend Options 3, Section 7(g), concerning Reserve Orders, that Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6. The Exchange believes that the addition of this language will remind Market Makers of the obligations noted within Options 2, Section 6.

Options 2, Section 10

Options 2, Section 10 describes Preferenced Orders. An Electronic Access Member may designate a ''Preferred Market Maker'' on orders it enters into the System (''Preferenced Orders'').[8] The Exchange proposes to amend the definition of a ''Preferenced Order'' and add a definition for ''Order Flow Provider'' in new subsection (1). The Exchange proposes to amend the definition of a ''Preferenced Order'' to mean any order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider.[9] The Exchange proposes to provide that the term ''Order Flow Provider'' means any Member that submits, as agent, orders to the Exchange.[10] Finally, the Exchange proposes to renumber current Options 2, Section 10(a)(1) which states, ''A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class'' as Options 2, Section 10(a)(1)(iii). These definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

Options 3, Section 17

The Exchange proposes to amend Options 3, Section 17, Kill Switch. Previously, the Exchange amended Options 3, Section 17 in order to decommission graphical user interface (''GUI'') functionality.[11] In eliminating the GUI functionality, the Exchange amended Options 3, Section 17(a)(1) to remove language related to the GUI functionality, including rule text related to purging orders at both the user and group level. While the GUI permitted a purge at both the user and group level, the remaining port functionality only removes orders at the user level, as specified in Options 3, Section 17(a)(1). At this time, the Exchanges proposes to remove the group level language from Options 3, Section 17(a).[12] This proposed change is intended to clarify the current rule text and would be implemented at the same time that SR–ISE–2023–06 is implemented.

Options 4, Section 5 [13]

The Exchange proposes to revise a sentence in Supplementary Material .03(f) to Options 4, Section 5. Currently, Supplementary Material .03(f) to Options 4, Section 5 states, ''Notwithstanding (e) above, when Short Term Options Series in equity options, excluding Exchange-Traded Funds (''ETFs'') and ETNs, have an expiration more than twenty-one days from the listing date, the strike interval for each options class shall be based on the table within Supplementary Material .03. However, Supplementary Material .03 to Options 4, Section 5 states, ''To the extent there is a conflict between applying Supplementary Material .03(e) and the below table, the greater interval would apply.'' To avoid confusion, the Exchange proposes to conform the language in Supplementary Material .03(f) to Options 4, Section 5 to state, ''Notwithstanding (e) above, when Short Term Options Series in equity options, excluding Exchange-Traded Funds (''ETFs'') and ETNs, have an expiration more than twenty-one days from the listing date, the strike interval for each options class shall be the greater of the

[8] *See* Options 2, Section 10(a).

[9] *See* proposed Options 2, Section 10(a)(1)(i).

[10] *See* proposed Options 2, Section 10(a)(1)(ii).

[11] *See* Securities Exchange Act Release No. 96818 (February 6, 2023), 88 FR 8950 (February 10, 2023) (SR–ISE–2023–06). This rule change is effective, but not yet operative. *See* Options Technical Alert 2024–1.

[12] The Exchange proposes to remove the words ''or group'' and the following sentence that applies to a group. The Exchange proposes to remove this sentence, ''Permissible groups must reside within a single broker-dealer.''

[13] Nasdaq, Phlx, BX, GEMX and MRX incorporate ISE Options 4, Section 5 by reference.

strike price interval specified in Supplementary Material .03(e) and the strike price interval specified in the table in Supplementary Material .07.'' This proposed amendment will make clear that the analysis is always the greater of the language in Supplementary Material .03(e) and the table in Supplementary Material .07.

The Exchange proposes a technical correction in Options 4, Section 5 to re-number current Supplementary Material .08, titled ''Monthly Options Series Program,'' into proposed Supplementary Material .09. The Exchange also proposes to update a related cross-citation in the last sentence of Options 4, Section 5(a). As amended, the sentence will provide: ''For Monthly Options Series, the Exchange will fix a specific expiration date and exercise price, as provided in Supplementary Material .09.''

The Exchange recently amended its Rulebook to adopt the Monthly Options Series Program in current Supplementary Material .08 to Options 4, Section 5.[14] Within Options 4, Section 5, however, the Exchange separately added another Supplementary Material .08, titled ''Low Priced Stock Strike Price Interval Program,'' as part of a prior rule filing.[15] Accordingly, the proposed changes will fix the Supplementary Material numbering and related cross-citation in Options 4, Section 5 in the manner described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed 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.

Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker are consistent with the act as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day will increase liquidity on the Exchange. The Exchange notes that other markets have similar requirements.[18]

The Exchange's proposal to amend the quoting obligations for a Preferred CMM are consistent with the Act. The Exchange proposes to amend the current rule text in Options 2, Section 5 to apply the obligation to a Preferred Market Maker more generally for ease of understanding the rule. The obligations for a Preferred CMM and Preferred PMM are the same and combining the obligations will make this clear. Today, pursuant to Options 2, Section 10, a Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class. Further, the Exchange proposes to first require that a Market Maker indicate interest in the program with the Exchange.[19] Once a Market Maker indicates interest in the program, the Preferred Market Maker has an ongoing obligation, collectively, to quote in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis until a Preferred Market Maker notifies the Exchange that it is no longer preferenced. The Exchange notes that other markets have similar requirements to quote, collectively, in 90% of the cumulative number of seconds among all options series on a daily basis.[20]

Similar to the last sentence of Options 2, Section 5(e), the Exchange proposes to revise Options 2, Section 5(e) to require a Preferred Market Maker who executes a Preferenced Order, as described in Options 2, Section 10, to be held to the standard of a Preferred Market Maker among all options series in which the Preferred Market Maker executed a Preferenced Order and to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis.

The Preferred Market Maker requirement to quote, collectively, in 90% of the cumulative number of seconds among all options series in which the Preferred Market Maker has executed a Preferenced Order on a daily basis is in addition to the quoting requirements for a Competitive Market Maker and Primary Market Maker. The Exchange believes that these quoting requirements create a direct nexus between the allocation that would be received by a Preferred Market Maker pursuant to Options 3, Section 10 and the liquidity that the Preferred Market Maker would be required to provide to the market in that particular options series. The Exchange notes that any Preferred Market Maker would need, collectively, to provide two-sided quotes in 90% of the cumulative number of seconds or such higher percentage as the Exchange may announce in advance, among all options series in which the Preferred Market Maker has executed a Preferenced Order for the entire day and on a daily basis. The Exchange believes that this quoting obligation is designed to promote just and equitable principles of trade by ensuring that Preferred Market Makers quote competitively in as many series as possible to attract Preferenced Orders so that they may receive an enhanced allocation as a Preferred Market Maker.

The Exchange's proposal to replace the word ''receives'' with the word ''executes'' in Options 2, Section 5(e) and (e)(3) is consistent with the Act and protects investors and the public interest because for a Market Maker to become aware of their quoting obligations, the Market Maker must be allocated pursuant to Options 2, Section 10 as a Preferenced Order. Market Makers are unaware if an order is preferenced to them until such time as they execute the Preferenced Order and receive their enhanced allocation. Of note, A Market Maker must be quoting at the NBBO at the time the Preferenced Order is received to be allocated. Therefore, a Preferred Market Maker has the ongoing quoting obligation from the time a Preferred Market Maker executes its first Preferenced Order in the options in which the Preferred Market Maker is assigned until a Preferred Market Maker notifies the Exchange that the Preferred Market Maker is no longer preferenced.

The Exchange's proposal to amend Options 2, Section 5(e)(5) to provide that ''For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis'' is consistent with the

[14] *See* Securities Exchange Act Release No. 99104 (December 7, 2023), 88 FR 86404 (December 13, 2023) (SR–ISE–2023–32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Monthly Options Series and Amend the Nonstandard Expirations Program).

[15] *See* Securities Exchange Act Release No. 99029 (November 28, 2023), 88 FR 84010 (December 1, 2023) (SR–ISE–2023–30).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Nasdaq Phlx LLC and Nasdaq BX, Inc. Options 2, Section 5.

[19] The Exchange would issue an Options Trader Alert to notify Members that they are required to express their interest in receiving Preferenced Orders.

[20] *See* NYSE Arca, Inc. (''NYSE Arca'') Rule 6.88–O and NYSE American LLC (''NYSE American'') Rule 964.1NY. NYSE Arca Rule 6.88–O(iv) states that these obligations will apply collectively to all series in all of the issues for which the Directed Order Market Maker receives Directed Orders, rather than on an issue-by-issue basis.

Act. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum.

Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title ''Options Classes to Which Appointed'' and add ''non-appointed'' to the paragraph is consistent with the Act for several reasons. Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, in their appointed and non-appointed classes. Today, Market Makers may not enter Customer Cross Orders in their appointed or non-appointed options classes as only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). With this proposal, the Exchange is not proposing to amend the restrictions applicable to Market Maker Orders. Removing the last sentence of Options 2, Section 6 is consistent with the Act because Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. Removing Options 2, Section 6(b) is consistent with the Act because the language is repetitive of rule text contained in Options 2, Section 6(a) and Options 2, Section 4(b)(4). Finally, adding rule text that states that ''Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6'' in Options 3, Section 7(g) is consistent with the Act because it will remind Market Makers of the obligations noted within Options 2, Section 6. The language would harmonize ISE's rule text to that of BX and Phlx in Options 2, Section 6.

Options 2, Section 10

The Exchange's proposal to amend the definition of a ''Preferenced Order'' and add a definition for ''Order Flow Provider'' in new subsection (1) are consistent with the Act and protect investors and the general public because they clarify the meaning of terms utilized with respect to Preferenced Orders. The definitions will bring greater clarity to Options 2, Section 10 and Options 2, Section 5 and will harmonize these definitions to those of Phlx at Options 2, Section 10.

Options 3, Section 17

The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned is consistent with the Act. The Exchange notes that purging orders through ports can only occur at the user level as specified in Options 3, Section 17(a)(1). The amendment will clarify the current rule text.

Options 4, Section 5

The Exchange's proposal to conform the rule text in Supplementary Material .03(e) to Options 4, Section 5 and the table in Supplementary Material .07 of Options 4, Section 5 is consistent with the Act. This amendment will bring greater clarity to the application of the strike interval for Short Term Options Series, excluding ETFs and ETNs, have an expiration more than twenty-one days from the listing date.

The Exchange believes that the proposed technical changes in Options 4, Section 5 to update the Supplementary Material numbering and related cross-citation in Options 4, Section 5(a) in the manner described above are consistent with the Act. By making these corrective amendments, the proposed rule changes will bring greater clarity to the Exchange's Rulebook and avoid potential confusion, to the benefit of investors and the public interest.

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.

Options 2, Section 5

The Exchange's proposal to amend the quoting obligations of a Competitive Market Maker does not impose an undue burden on competition as the enhanced requirement to provide two-sided quotations, collectively, in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading each day would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers.

The Exchange's proposal to amend the quoting obligations for a Preferred Market Maker does not impose an undue burden on competition because as amended the quoting obligations of Preferred Market Maker would apply uniformly to all Electronic Access Members that elect to become Competitive Market Makers or Primary Market Makers. The proposal does not impose an undue burden on inter-market competition as other options markets may impose similar quoting obligations.

Finally, amending Options 2, Section 5(e)(5) to provide that ''For purposes of the Exchange's surveillance of Member compliance with this Rule, the Exchange will determine compliance on at least a monthly basis'' does not impose an undue burden on competition. The Exchange notes that it may increase the frequency of the surveillance in particular circumstances but that it would conduct monthly surveillance at a minimum. Nor does the amendment to Options 2, Section 5(e)(5) impose an undue burden on inter-market competition as other markets may elect to perform their surveillance in a similar fashion.

Options 2, Section 6 and Options 3, Section 7

The Exchange's proposal to amend Options 2, Section 6, Market Maker Orders, to cite to Options 3, Section 14, which governs Complex Orders, remove the title ''Options Classes to Which Appointed'' and add ''non-appointed'' to the paragraph does not impose an undue burden on competition as the Exchange is not amending the restrictions applicable to Market Maker Orders. Rather, the changes will make clear that Market Makers may not enter Reserve Orders, as is the case today, but may utilize all other single-leg and Complex Order types, as is the case today. Additionally, today, Market Makers may not enter Customer Cross Orders in non-appointed options classes because only Priority Customers may enter Customer Cross Orders pursuant to Options 3, Section 7(i). Adding rule text that states that ''Market Makers may not enter Reserve Orders pursuant to Options 2, Section 6'' in Options 3, Section 7(g) does not impose an undue burden on competition because it will remind Market Makers of the obligations noted within Options 2, Section 6. Removing the last sentence of Options 2, Section 6 does not impose an undue burden on competition because all Competitive Market Makers will be required to quote throughout the day with the proposed amendments to Options 2, Section 5. The rule text will harmonize ISE's language to Phlx and BX Options 2, Section 6. The proposal does not impose an undue burden on inter-market competition as other options markets may similarly copy ISE's order types and impose similar restrictions.

Options 2, Section 10

The Exchange's proposal to amend the definition of ''Preferenced Order'' and add a definition for ''Order Flow

Provider'' in new subsection (1) does not impose an undue burden on competition because the defined terms provide additional clarity and harmonize to rule text in Phlx at Options 2, Section 10. The proposed changes are not substantive in nature.

Options 3, Section 17

The Exchange's proposal to remove rule text from Options 3, Section 17(a) related to GUI functionality which is being decommissioned does not impose an undue burden on competition because no Member may purge orders at the group level. The amendment will clarify the current rule text. The proposal does not impose an undue burden on inter-market competition as other options markets may similarly copy ISE's Kill Switch functionality.

Options 4, Section 5

The Exchange's proposal to conform the rule text in Supplementary Material .03(e) and the table in Supplementary Material .07 of Options 4, Section 5 does not impose an undue burden on competition, rather it will bring greater clarity to the application of the strike interval for Short Term Options Series, excluding ETFs and ETNs, have an expiration more than twenty-one days from the listing date. The proposed change does not substantively amend the application of the listing rule.

The proposed technical corrections in Options 4, Section 5 to update the Supplementary Material numbering and related cross-citation in Options 4, Section 5(a) in the manner described above do not impose an undue burden on competition. The proposed changes are not competitive and are intended to bring greater clarity to the Exchange's Rulebook and avoid potential confusion, to the benefit 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

No written comments were either solicited or 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)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2024–31 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–ISE–2024–31. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–ISE–2024–31 and should be submitted on or before August 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16939 Filed 7–31–24; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 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.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–544, OMB Control No. 3235–0604]

Proposed Collection; Comment Request; Extension: Exchange Act Form 10–D

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on this collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 10–D is a periodic report used by asset-backed issuers to file distribution and pool performance information pursuant to Rule 13a–17 (17 CFR 240.13a–17) or Rule 15d–17 (17 CFR 240.15d–17) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C.78a *et seq.*). The form is required to be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The information provided by

Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 39.0 hours per response to prepare and is filed by approximately 8,258 respondents. We estimate that 75% of the 39.0 hours per response (29.25 hours) is prepared by the company for a total annual reporting burden of 241,547 hours (29.25 hours per response × 8,258 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by September 30, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 26, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16936 Filed 7–31–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100606; File No. SR–NYSEARCA–2024–60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for the NYSE Arca Aggregated Lite Data Feed

July 26, 2024.

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 July 11, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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

The Exchange proposes to establish fees for the NYSE Arca Aggregated Lite data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Arca Equities Proprietary Market Data Fees Schedule (''Fee Schedule'') and establish fees for the NYSE Arca Aggregated Lite (''NYSE Arca Agg Lite'') data feed,[4] effective July 11, 2024.[5]

In summary, the NYSE Arca Agg Lite is a NYSE Arca-only frequency-based depth of book market data feed of the NYSE Arca's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. The NYSE Arca Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE Arca Agg Lite includes depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Arca Agg Lite includes order imbalance information prior to the opening and closing of trading.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [7] Indeed, cash equity trading is currently dispersed across 16 exchanges,[8] numerous alternative trading systems,[9] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The proposed rule change establishing the NYSE Arca Agg Lite data feed was immediately effective on February 27, 2024. *See* Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (SR–NYSEARCA–2024–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Arca Aggregated Lite Market Data Feed).

[5] The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSEARCA–2024–39). SR–NYSEARCA–2024–39 was subsequently withdrawn and replaced by this filing.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[8] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

20% market share (whether including or excluding auction volume).[10]

Proposed NYSE Arca Agg Lite Data Feed Fees

To reflect the value of NYSE Arca's market data, the Exchange proposes to establish the fees listed below for the NYSE Arca Agg Lite data feed. The Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE, NYSE American and NYSE National) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data subscribers that also currently subscribe to market data feeds from the Exchange's affiliates.

1. *Access Fee.* For the receipt of access to the NYSE Arca Agg Lite data feed, the Exchange proposes to charge $1,500 per month. This proposed Access Fee would be charged to any data recipient that receives the NYSE Arca Agg Lite data feed. Data recipients that only use display devices to view NYSE Arca Agg Lite market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee would be charged only once per firm.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of $30 per month and a Non-Professional User Fee (Per User) of $4 per month. These user fees would apply to each display device that has access to the NYSE Arca Agg Lite data feed.

3. *Redistribution Fee.* For redistribution of the NYSE Arca Agg Lite data feed, the Exchange proposes to establish a fee of $250 per month. The proposed Redistribution Fee would be charged to any Redistributor of the NYSE Arca Agg Lite data feed, which is defined to mean a vendor or any person that provides a real-time NYSE Arca market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee would be charged only once per Redistributor account. As an incentive to potential Redistributors to subscribe to the NYSE Arca Agg Lite data feed, the Exchange proposes to waive the Access Fee and Redistribution Fee for a Redistributor if the Redistributor provides NYSE Arca Agg Lite externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE Arca Agg Lite data feed will have the Access Fee and Redistribution Fee waived if such Redistributor provides NYSE Arca Agg Lite externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE Arca Agg Lite, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE Arca Agg Lite market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE Arca Agg Lite and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to subscribe to and redistribute NYSE Arca Agg Lite. The Exchange believes that this proposed fee waiver for Redistributors of NYSE Arca Agg Lite would provide an incentive for Redistributors to make NYSE Arca Agg Lite available to their customers, which will increase the availability of the Exchange's market data products to a larger potential population of data recipients.

Further, the Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE Arca Agg Lite to Professional and Non-Professional Users. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the combination of the Access Fee and Redistribution Fee for NYSE Arca Agg Lite that the Redistributor would otherwise be required to pay to the Exchange. For example, a Redistributor that reports external Professional Users and Non-Professional Users in a month totaling $1,750 or more would receive a maximum credit of $1,750 for that month, which could effectively reduce its monthly fee for access and redistribution to zero. If that same Redistributor were to report external User quantities in a month totaling $600 of monthly usage, that Redistributor would receive a credit of $600. The Exchange believes the proposed credit would provide Redistributors with an incentive to increase their redistribution of NYSE Arca Agg Lite because the credit they would be eligible to receive would increase if they report additional external User quantities.

4. *Enterprise Fees.* The Exchange proposes to establish an enterprise license that will reduce Exchange fees and administrative costs for subscribers that disseminate NYSE Arca Agg Lite. Subscribers that are broker-dealers will be able to distribute the NYSE Arca Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of $35,000, with an opportunity to lower that fee to $31,500 per month if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers will be able to distribute the NYSE Arca Agg Lite data feed for display usage to an unlimited number of recipients (professional users and non-professional users) for a monthly fee of $110,000, with an opportunity to lower that fee to $99,000 per month if they contract for twelve months of service in advance.

As proposed, the NYSE Arca Agg Lite data feed may be distributed pursuant to the proposed market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer through such broker-dealer's own devices. Purchase of an enterprise license would eliminate per User subscriber fees for NYSE Arca Agg Lite. Further, the Exchange proposes to waive the Access Fee and the Redistribution Fee for NYSE Arca Agg lite for Redistributors that pay either the Non-Professional Enterprise Fee or the Professional and Non-Professional Enterprise Fee. The Exchange believes the proposed fee waiver would provide an incentive for Redistributors to subscribe to the NYSE Arca Agg Lite market data product at the enterprise level to reduce the fees it would pay to the Exchange and without having to report the number of users that receive the data feed from the Redistributor.

Subscribers that intend to purchase a market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of $31,500 for distribution of NYSE Arca Agg Lite to an unlimited number of non-professional users, or $99,000 per month for distribution to an unlimited number of professional users and non-professional users. This feature is intended to simplify cost projections and budgeting for both subscribers and the Exchange. Subscribers that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by NYSE Arca Agg Lite by paying the standard fee of $35,000 per month for distribution of NYSE Arca Agg Lite to an unlimited number of non-professional users, or $110,000 per month for distribution to an unlimited number of professional users and non-professional users. Subscribers that elect to pay the monthly fee will be able to

[10] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve-month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for subscribers, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

5. *Non-Display Use Fees.* The Exchange proposes to establish non-display fees for the NYSE Arca Agg Lite data feed that are based on the non-display use categories charged by NYSE, NYSE American, NYSE National, the CTA, and the UTP Plan for non-display use.[11] Non-display use would mean accessing, processing, or consuming the NYSE Arca Agg Lite data feed delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE Arca Agg Lite, there would be three categories of, and fees applicable, to data recipients. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be $4,500 per month and would apply when a data recipient's Non-Display Use of the NYSE Arca Agg Lite data feed is on its own behalf, not on behalf of its clients.
- As proposed, Category 2 Fees would be $4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Arca Agg Lite data feed on behalf of its clients.
- As proposed, Category 3 Fees would be $4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Arca Agg Lite data feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged $4,500 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of $13,500 per month; even if the data recipient uses the NYSE Arca Agg Lite data feed for more than three platforms, it will not pay more than $13,500 for such Category 3 use per month.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the NYSE Arca Agg Lite data feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE Arca Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE Arca Agg Lite data feed for a Category 3 Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration.

6. *Non-Display Use Declaration Late Fee.* Data recipients that receive the NYSE Arca Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2025, NYSE Arca Agg Lite data feed recipients would be required to submit, by January 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration applies to all real-time NYSE Arca data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of $1,000 per month to any data recipient that pays an Access Fee for the NYSE Arca Agg Lite data feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31 due date, and would apply beginning February 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee applicable to NYSE Arca Agg Lite data feed would be set forth in endnote 2 on the Fee Schedule. As proposed, endnote 2 would be amended with the proposed addition of the following new text: ''The Non-Display Declaration Late Fee will apply, beginning in 2025, to NYSE Arca Aggregated Lite data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and applies beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display use Declaration.''

In addition, if a data recipient's use of the NYSE Arca Agg Lite data feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

7. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE Arca Agg Lite data feed in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[12]

8. *Three-Month Fee Waiver.* The Exchange currently provides a one-month free trial to any firm that subscribes to a particular NYSE Arca market data product for the first time. Under the current one-month trial, a

[11] *See* Endnote 1 to the NYSE Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE American LLC Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf;* Endnote 1 to the NYSE National Equities Proprietary Market Data Fees, available here: *https://www.nyse.com/publicdocs/nyse/data/NYSE_National_Market_Data_Fee_Schedule.pdf;* Endnote 8 to the Schedule of Market Data Charges for the CTA, available here: *https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf;* and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: *http://utpplan.com/DOC/Datapolicies.pdf. See, e.g.,* Securities Exchange Act Release Nos. 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) and 73011 (September 5, 2014), 79 FR 54315 (September 11, 2014) (SR–NYSEARCA–2014–93).

[12] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Arca Agg Lite data feed, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

first-time subscriber is not charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee and Redistribution Fee for one calendar month.[13] The Exchange now proposes an additional three-month fee waiver for any Redistributor that subscribes to a particular NYSE Arca market data product for the first time for external redistribution. As proposed, a first-time Redistributor would be any firm that has not previously subscribed to and externally redistributed a particular NYSE Arca market data product listed on the Fee Schedule. As proposed, a first-time Redistributor that subscribes to a particular NYSE Arca market data product would not be charged the Access Fee and the Redistribution Fee for that product for three calendar months. Any other fees, including but not limited to, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Enterprise Fee would be billable after the first calendar month after a first-time Redistributor subscribes to a particular NYSE Arca market data product. For example, a first-time Redistributor that chooses to subscribe to NYSE Arca Agg Lite on July 24, 2024 would not be charged the Access Fee and the Redistribution Fee for the months of August, September, and October 2024. The proposed fee waiver would be for the three calendar months following the date a Redistributor is approved to receive access to the particular NYSE Arca market data product. The Exchange would provide the three-month fee waiver for each particular product to each Redistributor once.

The Exchange believes that providing a three-month fee waiver to NYSE Arca market data products listed on the Fee Schedule would enable potential Redistributors to determine whether a particular NYSE Arca market data product provides value to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed three-month fee waiver would also provide Redistributors with time to begin onboarding new clients prior to being liable to the Access Fee and the Redistribution Fee, allowing time to choose how to allocate costs and increase revenues to defray costs associated with providing a new feed to its customers.

Application of Proposed Fees

The Exchange is not required to make the NYSE Arca Agg Lite data feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE Arca Agg Lite data feed. Firms that choose to purchase the NYSE Arca Agg Lite data feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE Arca Agg Lite data feed or any other similar products are attractively priced.

The Exchange believes the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE Arca Agg Lite and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE Arca Agg Lite. The Exchange believes that this proposed rule change also has the potential to attract new Redistributors for NYSE Arca Agg Lite.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE ArcaBook feed. The Exchange is proposing fees for the NYSE Arca Agg Lite data feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE ArcaBook feed. Specifically, the fees for the NYSE ArcaBook feed—which like the NYSE Arca Agg Lite data feed, includes depth of book, auction imbalances, and security status messages—consist of an Access Fee of $2,000 per month, a Professional User Fee (Per User) of $60 per month, a Non-Professional User Fee (Per User) that ranges between $3 per month to $10 per month, Non-Display Fees of $6,000 per month for each of Categories 1, 2 and 3, and a Redistribution Fee of $2,000 per month. The Exchange also charges a Non-Display Use Declaration Late Fee of $1,000 per month and a Multiple Data Feed Fee of $200 per month for NYSE ArcaBook.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [18]

The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'''[19]

More recently, the Commission confirmed that it applies a ''market-based'' test in its assessment of market data fees, and that under that test:

> the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its

[13] *See* Fee Schedule.

[14] *See* NYSE Arca Equities Proprietary Market Data Fees at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Proprietary_Data_Fee_Schedule.pdf.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4), (5).

[17] *See* Regulation NMS Adopting Release, 70 FR 37495, at 37499.

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[19] *Id.* at 535.

proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.[20]

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I,* ''[n]o one disputes that competition for order flow is fierce.'' [21] The court further noted that ''no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,'' and that an exchange ''must compete vigorously for order flow to maintain its share of trading volume.'' [22]

As noted above, while Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [23] Indeed, today, equity trading is currently dispersed across 16 exchanges,[24] numerous alternative trading systems,[25] broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[26]

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020; [27] Members Exchange (MEMX), which began operations as an exchange on September 29, 2020; [28] and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.[29]

These low barriers enable existing exchange customers to disintermediate and start their own exchanges if they think the prices charged for exchange proprietary market data products are too high. This is precisely the rationale behind the creation of MEMX, which was formed by some of the largest and most well capitalized financial firms that are also Exchange customers (including Bank of America, BlackRock, Charles Schwab, Citadel, Citi, E*Trade, Fidelity, Goldman Sachs, J.P. Morgan, Jane Street, Morgan Stanley, TD Ameritrade, and others).[30]

For example, one of MEMX's founding principles is that exchange proprietary market data prices are too high, and that MEMX will benefit its members by offering ''[l]ower pricing on market data.'' [31] Nor is this a new phenomenon: exchange customers formed BATS to compete with incumbent exchanges and once registered as an exchange in 2008, BATS did not initially charge for market data. The BATS venture was a financial success for its founders, first through recouping their investment in its initial public offering and then in the subsequent sale of BATS to Cboe, which now charges for market data from those exchanges. Notably, MEMX has some of the same founding broker-dealer customers, leading some to dub MEMX ''BATS 2.0.'' [32]

The fact that this cycle is viable and repeatable by entities that both trade on and compete with existing exchanges confirms that barriers to entry are low and that these markets are competitive and contestable.[33] And low barriers to entry act as a market check on high prices.[34]

In sum, the fierce competition thus constrains any exchange from pricing its market data at a supracompetitive price and constrains the Exchange in setting its fees at issue here.

More specifically, in setting fees for the NYSE Arca Agg Lite data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of an increasing number of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange's data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for proprietary market data.

The Exchange notes that the NYSE Arca Agg Lite is entirely optional. The Exchange is not required to make the NYSE Arca Agg Lite available to any customers, nor is any customer required to purchase the NYSE Arca Agg Lite market data feed. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[35] a customer's decision

[20] *See* Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (''National IF Approval Order'') (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008).

[21] *NetCoalition I,* 615 F.3d at 544 (internal quotation omitted).

[22] *Id.*

[23] *See* Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[24] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[25] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[26] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[27] *See* LTSE Market Announcement: MA–2020–020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020__Production_Securities_Launching_August_28_-_Google_Docs.pdf* and LTSE Market Announcement: MA–2020–025, available here: *https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.*

[28] As of October 29, 2020, MEMX is trading all NMS symbols. *See https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/.*

[29] *See* MIAX Pearl Press release, dated September 29, 2020, available here: *https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.*

[30] MEMX Home Page (''Founded by members and investors, MEMX aims to drive simplicity, efficiency, and competition in equity markets.''), available at *https://memx.com/.*

[31] MEMX home page, available at *https://memx.com/.*

[32] *See* ''MEMX turns up the heat on US stock exchanges,'' Financial Times, January 9, 2019, available at *https://www.ft.com/content/4908c8b0-1418-11e9-a581-4ff78404524e; see also* ''US equities exchanges: If you can't beat them, join them,'' Euromoney, February 13, 2019, available at *https://www.euromoney.com/article/b1d3tfby4p3y4v/us-equities-exchanges-if-you-cant-beat-them-join-them.*

[33] *United States* v. *SunGard Data Sys.,* 172 F. Supp. 2d 172, 186 (D.D.C. 2001) (recognizing that ''[a]s a matter of law, courts have generally recognized that when a customer can replace the services of an external product with an internally-created system, this captive output (*i.e.* the self-production of all or part of the relevant product) should be included in the same market.''). In *SunGard,* the court rejected the Antitrust Division's attempt to block SunGuard's acquisition of the disaster recovery assets of Comdisco on the basis that the acquisition would ''substantially lessen competition in the market for shared hotsite disaster recovery services,'' when the evidence showed that ''internal hotsites'' created by customers competed with the ''external shared hotsite business'' engaged in by the merging parties. *Id.* at 173–74, 187.

[34] *United States* v. *Baker Hughes,* 908 F.2d 981, 987 (1990) (''In the absence of significant barriers [to entry], a company probably cannot maintain supracompetitive pricing for any length of time.''); *see also* David S. Evans and Richard Schmalensee, Markets with Two-Sided Platforms, in 1 Issues In Competition Law and Policy 667, 685 (ABA Section of Antitrust Law 2008) (noting that exchange mergers in 2005 and 2006 were approved by competition authorities in part in reliance on planned and likely entry of other firms).

[35] The Exchange notes that broker-dealers are not required to purchase proprietary market data to

Continued

whether to purchase any of the Exchange's proprietary market data feeds, including the NYSE Arca Agg Lite, is entirely discretionary. Most firms that choose to subscribe to the proprietary market data feeds from the Exchange, including NYSE Arca Agg Lite, would do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange for order flow. Such firms are able to determine for themselves whether the NYSE Arca Agg Lite data feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE Arca Agg Lite data feed does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE Arca Agg Lite data feed.

Further, in the case of products that are also redistributed through market data vendors such as Bloomberg and Refinitiv, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors may elect not to make NYSE Arca Agg Lite available to its customers unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE Arca Agg Lite can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

In setting the proposed fees for the NYSE Arca Agg Lite data feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.[36]

The NYSE Arca Aggregated Lite market data feed is subject to significant competitive forces that constrain its pricing. Specifically, the NYSE Arca Agg Lite data feed competes head-to-head with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX''), each of which offers a market data product called BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth and EDGX Summary Depth, respectively (collectively, the ''Cboe Summary Depth'').[37] Similar to Cboe Summary Depth, NYSE Arca Agg Lite can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, NYSE Arca Agg Lite, similar to Cboe Summary Depth, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by NYSE Arca, except unlike Cboe Summary Depth, which provides aggregated depth per security for up to five price levels, NYSE Arca Agg Lite would provide aggregated depth per security for up to ten price levels on both the bid and offer sides of the NYSE Arca limit order book as well as auction imbalance data.

The specific fees that the Exchange proposes for the NYSE Arca Agg Lite data feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are reasonable because they represent the value of receiving the data on an aggregated basis. The Exchange believes that providing vendors and subscribers with the option to subscribe to a market data product that integrates a subset of data from existing products and where such aggregated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements, would allow vendors and subscribers to choose the best solution for their specific business needs.

The Exchange believes the proposed fees for the NYSE Arca Agg Lite data feed are also reasonable when compared to fees for comparable products, such as the Cboe Summary Depth.[38] Additionally, the Exchange is proposing fees for the NYSE Arca Agg Lite data feed that are based on the existing fee structure that data recipients already pay for the NYSE Arca's other market data products. The Exchange believes that adopting the same fee structure would reduce administrative burdens on NYSE Arca data subscribers that also currently subscribe to market data feeds from NYSE Arca.

Access Fee. The Exchange believes that the proposed monthly Access Fee of $1,500 for the NYSE Arca Aggregated Lite data feed is reasonable because it is lower than the fees charged by BZX, BYX, EDGA, and EDGX, each of which charges between $2,500 per month to $5,000 per month for both Internal Distribution and External Distribution of the Cboe Summary Depth market data product.[39]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE Arca Agg Lite data feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the NYSE Arca Agg Lite data feed by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of $30 and monthly Non-Professional User Fee (Per User) of $4 are reasonable because they are comparable to user fees generally charged by exchanges. For example, NYSE Arca charges a monthly Professional User Fee (Per User) of $60

comply with their best execution obligations. *See In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations,* Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[36] For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. *See* National IF Approval Order, *supra* note 20, at 67397 [release p. 21] (''[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.'' (internal quotations omitted)).

[37] *See* BZX Rule 11.22(m) BZX Summary Depth; BYX Rule 11.22(k) BYX Summary Depth; EDGA Rule 13.8(f) EDGA Summary Depth; and EDGX Rule 13.8(f) EDGX Summary Depth. The Cboe Summary Depth offered by BZX, BYX, EDGA and EDGX are each a data feed that offers aggregated two-sided quotations for all displayed orders for up to five (5) price levels and contains the individual last sale information, market status, trading status and trade break messages.

[38] *See https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.*

[39] *Id.*

and a monthly Non-Professional User Fee (Per User) of up to $10 for the NYSE ArcaBook feed.[40] Although the proposed User Fees for Professional and Non-Professional Users are higher than those charged by BZX, BYX, EDGA and EDGX, the Exchange notes that User fees are only a subset of the total fees that vendors and subscribers pay and the lower fees proposed to access and redistribute NYSE Arca Agg Lite would provide such market data recipients with a more affordable alternative to existing substitutes offered by the Exchange and its competitors.

Redistribution Fees. The Exchange believes that it is reasonable to charge redistribution fees because vendors receive value from redistributing the data in their business products for their customers. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit by re-transmitting the Exchange's market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE Arca Agg Lite data feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange believes the proposed monthly Redistribution Fee of $250 for the NYSE Arca Agg Lite data feed is reasonable because it is nominal and lower than the fees charged by BZX, BYX, EDGA and EDGX, each of which charges considerably more for both Internal Distribution and External Distribution of the Cboe Summary Depth market data feed.[41]

Enterprise Fees. The Exchange believes the proposed enterprise license is reasonable because it would reduce exchange fees, lower administrative costs for subscribers that are broker-dealers and help expand the availability of market information to investors, and thereby increase participation in financial markets. Subscribers that are broker-dealers would be able to disseminate the NYSE Arca Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of $35,000, or $31,500 if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers would be able to disseminate the NYSE Arca Agg Lite data feed for display usage to an unlimited number of professional users and non-professional users for a monthly fee of $110,000, or $99,000 if they contract for twelve months of service in advance. The proposed enterprise license would result in lower fees for subscribers able to reach the largest audience of investors, including retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by the Commission as equitable allocations of reasonable dues, fees and charges.[42]

Non-Display Use Fees. The Exchange believes that the proposed Non-Display Use fees reflect the value of the non-display data use to data recipients, which purchase such data on an entirely voluntary basis. Non-display data can be used by data recipients for a wide variety of uses, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms. Non-display data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, the Exchange and its affiliated exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead looks merely at the three following categories of potential use of non-display data: use of the data on the customer's own behalf (Category 1), use on behalf of clients (Category 2), and use to internally match buy and sell orders within an organization (Category 3).

The Exchange believes that it is reasonable to segment the fee for non-display use into these three categories. As noted above, the uses to which customers can put the NYSE Arca Agg Lite data feed are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because it reflects the actual value the customer derives from the data, based upon how many categories of use the customer makes of the data. Segmenting the fees for non-display data in this way avoids the unreasonable result of customers that make only limited non-display use of the data paying the same fees as customers that use the data for numerous different purposes.

The Exchange believes that the proposed fees of $4,500 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to non-display use fees generally charged by exchanges. For example, the fees for Non-Display Use of NYSE ArcaBook for Categories 1, 2 and 3 is $6,000 per month.[43] The Exchange believes that the proposed fees directly and appropriately reflect the value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

The Exchange believes that it is reasonable to cap non-display use fees for Category 3 at $13,500 per month per data recipient, because a higher monthly fee may potentially dissuade competitors from buying the NYSE Arca Agg Lite data feed.

The proposed Non-Display Use fees for the NYSE Arca Agg Lite data feed are also reasonable because they take into account the value of receiving the data for Non-Display Use on an integrated basis. The Exchange believes that the proposed fees directly and appropriately reflect the value of using the NYSE Arca Agg Lite data feed on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[44]

[40] *See* Fee Schedule.

[41] *See supra,* note 38.

[42] For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). *See also* Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR–NYSE–2017–60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

[43] *See* Fee Schedule.

[44] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display

Continued

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE Arca Agg Lite data feed and can correctly assess fees for the uses of the NYSE Arca Agg Lite data feed. Requiring annual submissions of such declarations is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE Arca Agg Lite data feed, the Exchange needs to have current and accurate information about the use of the NYSE Arca Agg Lite data feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest fee for taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Arca Agg Lite data feed to new Redistributors for three calendar months is reasonable because it would enable potential Redistributors to determine whether a particular NYSE Arca market data product provides value to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed fee waiver would also allow Redistributors to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new market data product available without charging a fee for three months is consistent with offerings of other exchanges. For example, BZX offers subscribers of BZX Summary Depth a three-month credit for external distribution, which is akin to the three-month fee waiver proposed by the Exchange.[45]

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE Arca Agg Lite data feed are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE Arca Agg Lite data feed. Any subscriber or vendor that chooses to subscribe to the NYSE Arca Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors are not required to purchase the NYSE Arca Agg Lite data feed and may choose to receive the data on the NYSE Arca Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of $1,500 for the NYSE Arca Agg Lite data feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Arca Agg Lite data feed, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($30 per month per user) from Non-Professional User fees ($4 per month per user) for display device access to the NYSE Arca Agg Lite data feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[46] Offering the NYSE Arca Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Arca Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $250 for redistributing the NYSE Arca Agg Lite data feed is equitably allocated because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license is equitably allocated because it would be available on an equal basis to all subscribers that are broker-dealers, each of whom would benefit from reduced exchange fees and from lower administrative costs. Moreover, the specific feature of the proposed enterprise license that will allow subscribers to lower fees by subscribing to a twelve-month contract is also an equitable allocation because all subscribers will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Subscribers will be free to move from the monthly to the annual rate at any time, or from annual to a monthly fee, with notice, at the expiration of the twelve-month period.

functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

[45] *See e.g.,* Securities Exchange Act Release No. 94432 (March 16, 2022), 87 FR 16277 (March 22, 2022) (SR–CboeBZX–2022–015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products).

[46] *See, e.g.,* Securities Exchange Act Release No. 72560 (July 8, 2014), 79 FR 40801 (July 14, 2014) (SR–NYSEARCA–2014–72) (establishing tiered Non-Professional User Fees (Per User) for NYSE ArcaBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a $4,500 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is equitable to cap non-display use fees for Category 3 at $13,500 per month per data recipient, because a higher monthly fee may potentially dissuade competitors from buying the NYSE Arca Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to any data recipient that pays an Access Fee for the NYSE Arca Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE Arca Agg Lite data feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Arca Agg Lite data feed to new Redistributors for three calendar months is equitable because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Arca Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is equitable to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to and redistributed the NYSE Arca Agg Lite data feed, since customers who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE Arca Agg Lite data feed are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE Arca Agg Lite data feed. Any subscriber, including Redistributor, that chooses to subscribe to the NYSE Arca Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers, including Redistributors, may choose to receive the data on the NYSE Arca Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of $1,500 for the NYSE Arca Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Arca Agg Lite, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees ($30 per month per user) from Non-Professional User fees ($4 per month per user) for display device access to the NYSE Arca Agg Lite data feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.[47] Offering the NYSE Arca Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Arca Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of $250 for redistributing the NYSE Arca Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those subscribers that are able to reach the largest audiences of investors, including retail investors, a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for other market data products.[48] Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each subscriber will be able to accept or reject the license depending on whether it will or will not lower costs for that

[47] *Id.*

[48] *See e.g.,* Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR–NASDAQ–2018–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License).

particular subscriber, and, if the license is not sufficiently competitive, the Exchange may lose market share. The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants can readily find substitutes. Accordingly, the Exchange is constrained from introducing a fee that would be inequitable or unfairly discriminatory.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a $4,500 per month fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to cap non-display use fees for Category 3 at $13,500 per month per data recipient, because a higher monthly fee may potentially dissuade competitors from buying the NYSE Arca Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of $1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE Arca Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the $200 per month per location fee to data recipients taking the NYSE Arca Agg Lite data feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Arca Agg Lite data feed to new Redistributors for three months is not unfairly discriminatory because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Arca Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is not unfairly discriminatory to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to the NYSE Arca Agg Lite data feed, since Redistributors who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will 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 fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fees would apply to all subscribers, including Redistributors, of the NYSE Arca Agg Lite data feed, and customers may not only choose whether to subscribe to the feed at all, but also may tailor their subscription to include only the products offered by the Exchange that they deem suitable for their business needs. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (*e.g.,* Category 2 fees apply only to those making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange is constrained by the availability of numerous substitute platforms also offering market data products, and low barriers to entry mean new exchanges are frequently introduced. In setting fees for the NYSE Arca Agg Lite data feed, the Exchange is constrained by the fact that if its pricing for the NYSE Arca Agg Lite data feed is unattractive to customers, customers will have their pick of an increasing number of alternative market data products to purchase instead of purchasing the Exchange's products.

In addition, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute market data products. Many other exchanges offer proprietary data feeds like the NYSE Arca Agg Lite data feed, supplying depth of book order data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because

market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [49] of the Act and paragraph (f) 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–60. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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–NYSEARCA–2024–60 and should be submitted on or before August 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–16937 Filed 7–31–24; 8:45 am]

BILLING CODE 8011–01–P

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability, Notice of Public Comment Period, Notice of Public Meetings, and Request for Comment on the Draft Tiered Environmental Assessment for SpaceX Starship/Super Heavy Vehicle Increased Cadence at the Boca Chica Launch Site in Cameron County, Texas

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability, notice of public comment period, notice of public meetings, and request for comment.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), Council on Environmental Quality NEPA-implementing regulations, and FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures,* the FAA is announcing the availability of and requesting comment on the draft Tiered Environmental Assessment for SpaceX Starship/Super Heavy Vehicle Increased Cadence at the Boca Chica Launch Site in Cameron County, Texas (Draft EA). The Draft EA will analyze SpaceX's proposal to increase the cadence of operations up to 25 annual Starship/Super Heavy orbital launches, up to 25 annual landings of Starship, up to 25 annual landings of Super Heavy, and addresses vehicle upgrades.

DATES: No registration is required for the four in-person public meetings that will be held at the following dates and times (Central):

- Tuesday, August 13, 2024; 1 p.m.–3 p.m. & 5:30–7:30 p.m. CDT, City of South Padre Island Convention Center, 7355 Padre Blvd., South Padre Island, TX 78597
- Thursday, August 15, 2024; 1 p.m.–3 p.m. & 5:30 p.m.–7:30 M CDT, Port Isabel Event & Cultural Center, 309 E Railroad Ave., Port Isabel, TX 78578

Registration is required for the virtual public meeting that will be held on the following date and time (Central):

- Tuesday, August 20, 2023; 5:30 p.m.–7:30 p.m. CDT, Registration Link: *https://us02web.zoom.us/webinar/register/WN_XiuGxJWtTkK3a84d8yFhVw,* Dial-in phone number: 888–778–0099 (Toll Free), Webinar ID: 857 9139 8585, Passcode: 864394

The public comment period for the Draft EA will close on August 29, 2024.

ADDRESSES: The FAA invites interested parties to submit comments on the Draft EA. Public comments can be submitted electronically to *www.regulations.gov* under Docket No. FAA–2024–2006, by postal mail to Ms. Amy Hanson, SpaceX EA, c/o ICF 1902 Reston Metro Plaza Reston, VA 20190, or delivered in written or verbal form at a public meeting.

FOR FURTHER INFORMATION CONTACT: Amy Hanson at (847) 243–7609 or *SpaceXBocaChica@icf.com.*

SUPPLEMENTARY INFORMATION: The FAA will provide a pre-recorded presentation during the first half hour of all of the public meetings. The public will also have an opportunity to submit written and oral comments during the meetings. English-Spanish translation services will be provided. Both English and Spanish versions of the presentation will be made available to the public on August 13, 2024, on this website listed above.

More information on the public meetings can be found at: *https://*

www.faa.gov/space/stakeholder_engagement/spacex_starship. If any accommodation for the public meetings is needed (such as additional translation services), please submit a request by August 2, 2024, to the project email address: *SpaceXBocaChica@icf.com.* For any media inquiries, please contact the FAA Press Office at *pressoffice@faa.gov.*

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the FAA in your comment to withhold from public review your personal identifying information, the FAA cannot guarantee that it will be able to do so. All comments received during the comment period will be given equal weight and be taken into consideration in the preparation of the Final EA.

Issued in Washington, DC, on July 29, 2024.

Stacey Molinich Zee,

Manager, Operations Support Branch.

[FR Doc. 2024–16983 Filed 7–31–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0165]

Agency Information Collection Activities; Revision of an Approved Information Collection: Financial Responsibility Motor Carriers, Freight Forwarders, and Brokers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The purpose of this ICR, titled, ''Financial Responsibility Motor Carriers, Freight Forwarders, and Brokers,'' is to provide registered motor carriers, property brokers, and freight forwarders a means of meeting financial responsibility filing requirements. This ICR sets forth the financial responsibility documentation requirements for motor carriers, freight forwarders, and brokers as a result of Agency jurisdictional statutes. The revision of three forms (BMC–36, BMC–84, and BMC–85) contained in this ICR is necessary due to the implementation of the Broker and Freight Forwarder Financial Responsibility Final Rule.

DATES: Comments on this notice must be received on or before September 30, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2024–0165 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ana Alvarez, Financial Analyst, Office of Registration, Financial Responsibility Filings Division, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366–0401; *ana.alvarez@dot.gov*.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0165), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2024-0165/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Privacy Act

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 edit, 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*.

Background

The Secretary of Transportation (Secretary) is authorized to register for-hire motor carriers of property and passengers under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA (49 CFR 1.87) and the regulations implementing these requirements may be found at 49 CFR part 387. The registration remains valid only as long as these transportation entities maintain, on file with FMCSA, evidence of the required levels of financial responsibility pursuant to 49 U.S.C. 13906. FMCSA regulations governing the financial responsibility requirements for these entities are found at 49 CFR part 387. The information collected from these forms are summarized and displayed in the Licensing and Information system.

Forms for Endorsements, Certificates of Insurance and Other Evidence of Bodily Injury and Property Damage Liability and Cargo Liability Financial Responsibility

Forms BMC–91 and BMC–91X, titled ''Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance,'' and Form BMC–82, titled ''Motor Carrier Bodily Injury Liability and Property Damage Liability Surety Bond Under 49 U.S.C. 13906,'' provide evidence of the required coverage for bodily injury and property damage (BI & PD) liability. A Form BMC–91X filing is required when a carrier's insurance is provided by multiple companies instead of just one. Form BMC–34, titled ''Household Goods Motor Carrier Cargo Liability Certificate of Insurance,'' and Form BMC–83, titled ''Household Goods Motor Carrier Cargo Liability Surety Bond Under 49 U.S.C. 13906,'' establish a carrier's compliance with the Agency's cargo liability requirements. Only household goods (HHG) motor carriers are required to file evidence of cargo insurance with FMCSA (§ 387.303(c)). Form BMC–90, titled ''Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability Under Section 13906, Title 49 of the United States Code,'' and Form BMC–32, titled ''Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability Under 49 U.S.C. 13906,'' are executed by the insurance company, attached to BI & PD or cargo liability insurance policy, respectively, and forwarded to the motor carrier or freight forwarder.

Requirement To Obtain Surety Bond or Trust Fund Agreement

Form BMC–84, titled ''Broker's or Freight Forwarder's Surety Bond Under 49 U.S.C. 13906,'' and Form BMC–85, titled ''Broker's or Freight Forwarder's Trust Fund Agreement Under 49 U.S.C. 13906 or Notice of Cancellation of the Agreement,'' are filed by brokers or freight forwarders to comply with the requirement that they must have a $75,000 surety bond or trust fund agreement in effect before FMCSA will issue property broker or freight forwarder operating authority registration. Both of these forms are being revised due to the implementation of the Broker and Freight Forwarder Financial Responsibility Final Rule (88 FR 78656, Nov. 16, 2023).

Cancellation of Prior Filings

Form BMC–35, titled ''Notice of Cancellation Motor Carrier Insurance under 49 U.S.C. 13906,'' Form BMC–36, titled ''Motor Carrier's, Broker's or Freight Forward's Surety Bonds under 49 U.S.C. 13906 Notice of Cancellation,'' and Form BMC–85, titled ''Broker's or Freight Forwarder's Trust Fund Agreement Under 49 U.S.C. 13906 or Notice of Cancellation of the Agreement,'' can be used to cancel prior filings. Form BMC–36 is being revised due to the implementation of the Broker and Freight Forwarder Financial Responsibility Final Rule.

Self-Insurance

Motor carriers can also apply to FMCSA to self-insure BI & PD and/or cargo liability in lieu of filing certificates of insurance with the FMCSA, as long as the carrier maintains a satisfactory safety rating (see § 387.309.) Form BMC–40 is the application used by carriers to apply for self-insurance authority.

Title: Financial Responsibility Motor Carriers, Freight Forwarders, and Brokers.

OMB Control Number: 2126–0017.

Type of Request: Revision of a currently approved ICR.

Respondents: For-hire Motor Carriers, Brokers, and Freight Forwarders.

Estimated Number of Respondents: 200,147.

Estimated Time per Response: The estimated average burden per response for Form BMC–40 is 40 hours. The estimated average burden per response for forms BMC–34, 35, 82, 83, 91, and 91X is 10 minutes per form. The estimated average burden per response for revised forms BMC–84, 85, and 36 is 12 minutes per form. In addition, form BMC–32 takes 10 minutes.

Expiration Date: June 30, 2025.

Frequency of Response: Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with FMCSA and then when such coverages are changed or replaced by these entities. Notices of cancellation are required only when such certificates of insurance, surety bonds, and trust fund agreements are cancelled. The BMC–40 is filed only when a carrier seeks approval from FMCSA to self-insure its BI & PD and/or cargo liability coverage.

Estimated Total Annual Burden: 49,786.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator Office of Research and Registration.

[FR Doc. 2024–16971 Filed 7–31–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals Who Have Chosen to Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending June 30, 2024. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
AARTS	MEAGAN	SARAH
ABDULLA	MIKAAL	MOHAMMED
ABE	AKIKO	
ABENDROTH	SARAH	SNEED
ACASIO	SHAUN	VALDECANAS
ACHESON	DIANA	E

Last name	First name	Middle name/initials
ACKERMAN	WINIFRED	JILL
ADAMS	DENISE	MARGARET
ADAMSKI	SUSAN	KATHERINE
ADEL	ANOUSHIRVAN	
AEBI	NINA	RAHEL
AESCHBACH	NATALIE	VONNE
AIELLO	ALISON	
AKATSU	HARUKO	
AKELAITIS	ERIC	MARTIN
AKMAN	MICHAEL	LOUIS
AL–ADSANI	NABEEL	ALI
ALBANI	SALVATORE	
ALBURY	WILLIAM	RANDALL
ALI	FAREESHA	FARAHNAZ NISHA
ALLEN	SUSAN	JANE
ALLEN	GINA	NICKOLE
ALLEN	MICHAEL	JAMES
ALLEN	VANESSA	NALANI
ALLEN	SUSAN	
ALLISON	KENNETH	RALPH
ALNAJJAR	NOZMI	MATSUMURA
AL–SUMAIT	ABDULAZIZ	
AL–SUWAIDI	DINA	
ALTENMUELLER	WALTER	ROLF
ALTMUELLER	STEPHAN	M
ALVES	RODRIGO	D'ALESSANDRO
AMAR	TAMARA	LEAH
AMBEROSE	MALIKA	
AMBROZIC	LAURA	KATHLEEN
AMDUR	KARL	EDWIN
AMEMORI	SATOKO	
AMEMORI	KENICHI	
AMICK	GRACE	MARY ELIZABETH
ANDERSON	BOYD	DAVID
ANDERSON	MELANIE	ELIZABETH
ANDERSON	LAURIE	ELIZABETH
ANDREWS	JULIAN	P
ANDRONOV	ELLEN	LOUISE
ANTROBUS–THORWEIHE	KATE	
ARCHACKI	MARCIN	PAWEL
ARFSTEN	NANNING	JOERG
ARMINIO	LEONARD	JOHN
ARNFIELD	ANTHONY	J
ARNFIELD	JOAN	MARGARET
ARNOLD	PETER	BERNARD
ATKINSON	WILLIAM	ILLSEY
AU	KA	HO
AUBIN	KAREN	M
AUINGER	PHILIP	MICHAEL
AZERRAD	ITAI	
AZUMA	MEGUMI	
BAAGE	CARL	GUSTAF JOAKIM
BABA	MIRNA	
BABIN	MARK	JOSEPH
BACSFALVI	VICTOR	
BAILEY	NANCY	MILDRED
BAKER	LILY	PATRICIA
BALL	PEGGY	R
BALLE	DIETMAR	
BALLHORN	CHRISTINA	ELIZABETH
BAMDAD	DARIUS	STEPHEN
BANGERTER	ADRIAN	ANDREAS
BARBER	CHRISTOPHER	DEREK RICHARD
BARDEN	MIREILLE	ADRIENNE
BARKER	ELIZABETH	DENICE
BARLOW–BUSCH	ROBERT	GEORGE
BARNEA	MICHELE	
BARNEA	ZWI	
BARNEA	LILIAN	SHOSHANA
BARR	MAYA	FRIDA
BARTHEL	ANNA	MARIA
BARTHOLOMEW	STEPHEN	ERIC
BARTIK	KRISTIN	FRIEDA
BARTKUS	ANDREW	LLOYD

Last name	First name	Middle name/initials
BARTON	MARY	LINDA
BARTSCH	JONAS	
BATAY–CSORBA	JODI	LYNN
BATYRBEKOVA	AIZHAN	
BATZOFIN	BARUCH	MARK
BAUER	JOHANNES	JAKOB
BAUER	BJORN	CHRISTIAN
BAUGH	WILLIAM	DONALD
BAUMAN	MARIE	M
BEAGLEY	JACQUELINE	
BEARPARK	SHANNON	ANNETTE
BEART	JULIA	DAWN
BEATH	ROBERT	REED
BEAUPRE	RICHARD	
BECKER	JEREMY	
BECKER	DAMIAN	IAN
BECKER	BARBARA	ANN
BEKHAZI	PHILIP	NICHOLAS
BENATAN	DANIEL	NATHAN
BENNETT	BRADFORD	BRIAN
BENNETT	NORA	CASEY
BENOIT	REBECCA	JULIE
BENOIT	SANDRA	JOY
BERBARI	ADEL	
BERGEN	JOSHUA	JAMES
BERGER	JAMIE	PAIGE
BERGERON	ALFRED	A
BERGERON	PAMELA	R
BERNHOEFT	FREDERIKE	AMELIA
BERRY	LUCIE	ANN
BERRY	TERRY	L
BERTHEIR	CAROLINE	MJ
BESWICK	SUSAN	ELIZABETH
BEUGH	PATTI	LYNN
BEYER	JILL	MAXINE
BHATTACHARYA	SANJAY	
BICKERTON	NATALIE	ESTELLE
BIGWOOD	PATRICIA	
BIRCH	GEORGIA	YORK
BIRCH	KENNETH	EARLE
BIRD	PETER	ANTHONY
BIRD	DIANA	LYN
BIRD	HEATHER	JANE
BIRD	BRIDGET	JANE
BIRNBAUM	ELLEN	SHARON
BIRNBAUM	ERIC	DAVID
BISHOP	MONIKA	
BLACKIE	STUART	IAN
BLAES	SOPHIA	HELENA
BLANCKAERT	NORBERT	JULIUS CORNELIUS
BLANK	SOENKE	M
BLEGVAD	PETER	
BLOMJOUS	NEAL	CHRISTIAAN
BLOOM	JEFF	ALAN
BLUNCK	PETRA	
BODEN	SARAH	JANE
BODENHAM	ANDREW	JOHN
BOEFFARD	PHILIP	ALAIN
BOGOIEVSKI	JENNIFER	JAN
BOILY	CHRISTOPHE	
BOLLER	CHRISTOPHER	WENDELL
BOLT	PHILIPP	
BONA	MARK	ULRICH
BONNEFOUS	CLAIRE	A
BONTEN–ROSSER	ANN	ELAINE
BOTHWELL	HARRIET	ANN FLEMING
BOTKIN	COLIN	DAVID
BOUCHAUD	PIERRE–ETIENNE	PATRICK
BOZEK	JOANNE	S
BRADEN–GOLAY	JAMES	LADD
BRADFORD	DANIEL	TIMOTHY
BRADLEY	MARK	WILLIAM ROGER
BRADSHAW	LAURA	KATHERINE
BRECKMAN	COURTNEY	LYNN

Last name	First name	Middle name/initials
BREECH	DAVID	PATRICK
BREITENBUECHER	DOMINIK	NICHOLAS
BRENDER	MARK	DAVID
BRIDGES	LEE	THOMAS
BRIGGS	BENJAMIN	ROBINS
BRINK	ROBERT	MAURICE SCOTT
BRODOWSKI	PETER	AUGUST
BROEKMAN	CATHARINA	C
BROOKE–BASRUR	KATHERINE	
BROOKES	ROGER	IAN
BROOKS	MICHAEL	JOSEPH
BROUGHTON	GEOFFREY	IAN
BROWN	EMILY	JANE
BROWN	JENNA	LOUISA
BROWN	ALEXANDER	BINNIE
BROWN	RANDAL	
BROWNE	ELIZABETH	CLAIRE
BRUBACHER	SANDRA	JOAN
BRUDER	MELISSA	TOWNSEND
BRUEGGEMANN	ROMANA	NICOLETTA
BRUEGGEMANN	ADRIANA	ELENIA
BRUNS	KATHRYN	JANE
BRUNSTEIN	JOHN	DAVID
BUCHANAN	ELIZABETH	
BUCHER	SIMONE	ANNE CATHERINE
BURDINE	MARJORIE	MAE
BURGESS	ANGELA	GAI
BURRELL	HANNAH	MARIA
BURRI	THOMAS	PATRICK
BUSI	JIN	
BUTLER	LYNN	DONA
CAI	HUI	
CALAVARO	FRANCO	OMAR
CALVET	MELISSA	MEGAN
CAMACHO	JOSEPH	RICHARD
CAMBANIS	STEFANIA	
CAMERON	VANESSA	ALISON
CAMPBELL	VIRGINIA	S
CAMPBELL	CAROLYN	JANE
CAMPBELL	KATHRYN	ANNE
CAMRASS	GODFREY	RAPHAEL
CANTREL	DAVID	WAYNE
CAO	GANG	
CAO	KANYU	
CAPLUNIK	JONATHAN	LIOR
CARLESS	JOY	
CARNEY	SEAN	M
CARSTARPHEN	KATHERINE	
CARTWRIGHT	EDMUND	JAMES
CARUSO	FRANCOISE	ELIZABETH
CASE	OZELLE	
CASH	TIMOTHY	MONROE
CASH	MADELINE	RUTH
CASSIDY	ANDREW	LAWRENCE
CATELLANI	HASSIMILIANO	
CELY	MICHELLE	LOUISE ROBERTS
CEOLIN	ERIC	THOMAS
CEOLIN	ALYSIA	MARIE
CEOLIN	KIMBERLY	ANN
CHADWICK	BRADLEY	E
CHALMAN	CHARLOTTE	DALE
CHAMBERLAIN	JOY	ANNE
CHAN	RONALD	CHI–YIN
CHANG	JOHN	HYUN JOON
CHANG	AMY	INJI
CHANG	MING	YEUNG
CHANG	SUN	HEE
CHANG	YUAN–LUNG	
CHAPMAN	JENNIFER	ELEANOR
CHARI	SANTOSH	SRINIVAS
CHELKOWSKI	WOJCIECH	FELICJAN
CHEN	THEODORE	
CHEN	CHEN	
CHEN	LI	

Last name	First name	Middle name/initials
CHEN	LIPING	
CHEN	CLEMENT	CHENG WEN
CHENG	YU–LIANG	
CHENG	BIN	
CHENG	TAKAKO	
CHEONG	DAVID	
CHESHAM	ROBERT	G
CHETNER	JONATHAN	MILLER
CHEU	RACHEL	TINA
CHEUNG	SERENA	MAN DUEN
CHIARAVALLE	LUCREZIA	MARIA
CHO	DANIEL	
CHOI	HEE	CHUNG
CHON	JINHEE	
CHONG	MAGGIE	
CHOUDHURY	AFM	NAZMUL
CHRIQUI	BENOIT	JOSEPH
CHUI	KAM	LING
CHUNG	LAWRENCE	G
CISKE	JOHN	OLIVER
CLAIRMAN	HAYYAH	YEHUDIT
CLARK	LAUREN	ELIZABETH
CLARK	STEPHANIE	JAY
CLARK	JOAN	MARIE
CLARK	TIMOTHY	WESLEY
CLARK	KARLA	MARIE
CLARK	DOUGLAS	G
CLARK	CAMILLIA	G
CLARK	LUKE	A
CLARKE	KYLE	LOGAN
CLARKE	CAROLINE	FRANCES
CLARKE ALLEN	MELINDA	
CLEESATTEL	NORMAN	ROBERT
CLOUGHERTY	DANNY	THOMAS
CLUETT	STEPHEN	
CODERRE	JENNIFER	ELIZABETH
COFFMAN	LISA	MAYUMI
COHEN	HILARY	ANNE
COHEN	CAROL	ELIZABETH
COHEN	EYTAN	M
COHLMEYER	DANIEL	ROBERT
COLIZOLI	OLYMPIA	DE LEON
COLLINS	DANIEL	RYU
COLLINS	STEPHEN	GRANT
COLTHOFF	NICHOLAS	SPENCER LEWIN ROM
CONNOLLY	JACQUELINE	
CONNOR	JOANNE	MARGARET CLEAVER
CONNOR	SARAH	ASHLEY
CONNOR	KEITH	W
CONRAD	MELINDA	BLANTON
CONVERY	MAIRE	ANN
CONWAY	CHRISTPHER	
COOK	BARRY	JAMES
COOKE	CHARLOTTE	LUCY
COPEMAN–HAYNES	CAROLINE	ROSE
COPES	DEBORAH	ANN
CORNAGLIA	ANDREA	LAURA
CORNELL	TAYLOR	MORGAN
CORRIERI	CHRISTINA	FRANCES
CORSIE	LISA	K
COSULICH	NESTOR	JORGE
COTTLE	KIMBERLY	ANN
COULOURIS	GEORGE	FRANKLIN
COUPENAC	PATRICIA	LE
COVILL	CHARLES	EDWARD
COWAN	JACQUELYN	ANNE
COWEN	DEBORAH	EMILY
CRAIG	BRIAN	LEE
CRAMER	PATRICIA	G
CRANDINI	ERMANNO	
CREE	WARREN	CHARLES
CRITCHFIELD	EMILY	CAROLYN
CRNOGORAC	JOELENE	
CROCKART	PATRICK	JAMES

Last name	First name	Middle name/initials
CROCKFORD	ROSS	MICHAEL
CROGNALETTI	MARISA	
CROGNALETTI	LORA	
CROWDER	SACHIKO	
CROXFOD	ANDREW	LEWIS
CRUZ	ALEXANDRE	MARCELO MARQUES
CUCKNELL	CATHERINE	MARIANNE
CULKIN FROMMELT	KATHELEEN	
CULTON	LISA	KAREN
CUNNINGHAM	DEBORAH	LOUISE
CURIEL	RINA	KAMIDE
CUTHBERTSON	DAVID	JAMES
CVIJANOVICH	MILENA	ANNA
DAAR	BILE	AHMED
DAGOO–CALDAROLA	SHELLIE	R A
DAILLENCOURT	LOUIS	MARIE OLIVIER
DAL BORGO	MICHELLE	HOSKINS KINSKY
DALCHER	DAMIAN	
DALEY	STEPHEN	PAUL
DANCHEK	JANICE	M
DANGKOSINTR	JITTIN	
DANIEL	DUDLEY	G
DANIEL	ANN	E
DANIEL	SHARMILA	
DAVIDOVIC	DAMIR	
DAVIES	ANA	MARIE
DAVIES	GAIL	STEMMLER
DAY	BENJAMIN	CLIFFORD
DE FRANG	KENNETH	WAYNE
DE JONG	FLOOR	
DE JUAN GARCIA	ARISTOBULO	
DE KONING	DENNIS	FRANK
DE LOOZ–CORSWAREM	JOY	GABRIELLA JEANNE MARIE JOSEPH
DE LOVINFOSSE	NICOLAS	ARNAUD
DECA	DAVID	
DEERBERG	FALKO	SEPP DIETRICH
DEGEN	GERHARD	
DEGENS	SAMANTHA	ISABELLE
DEGENS	MELISSA	NAOMI AISCHA
DEL FAVERO	DAVID	WILLIAM
DELBOY	MADELAINE	AMY
D'ELIA	HILARY	E
DELISLE	RYAN	MATTHEW
DELL	WILLIAM	ALEXANDER
DELTAS	JOANNIS	CONSTANTINOS
DEMPSEY	CYNTHIA	D
DENG	JUNCHENG	
DENNESS	LAURENCE	CHARLES
DENNEY	HOLLY	JOAN
DEPRENDA	MICHAEL	JOSEPH
DEW	GAVIN	LLEWELLYN
DI MAIO	ALESSIA	MARIA FRANCESCA
DICECCO	DANIELA	P
DICK	LINDA	G
DIETIKER	SUSAN	MELANIE
DIETRICH	MARK	RICHARD
DING	XIAO	
DINNEEN	DANIEL	MARK
DIOCAMPO	KRISTOFFER	RYAN
DIRSCHERL	JENNIFER	MARIE
DIRSE	GINTAS	
DISSLY	SARAH	MARGARET
DIXON	JAMES	LEE
DODD	KATHERINE	ELEANOR
DODD	FRANCES	MARGARET
DODSON	MARGARET	ANN
DOGGETT	DAVID	
DOGORITIS	ATHANASIOS	GEORGES
DOLAN	LAURIE	ELEANOR
DOLDING	HEIDI	MARIE
DONAHUE	PAUL	FRANCIS
DONALDSON	BRIAN	PAUL
DONNELLY	CAROLYN	PATRICIA
DOOLEY	SIOBHAN	MARY

Last name	First name	Middle name/initials
DORIGO	ARTI	PRATAP SHIRKE
DOUGHERTY	ERIC	EDWARD
DOUGHERTY	NATHALIE	J
DOUGLAS	JENNIFER	NICOLE
DOWN	PETER	J
DOWNEY	ARON	
DRACHEV	VLADIMIR	
DRAGICEVIC	TODOR	TODE
DRAGICEVIC	KYONGBIN	BAEK
DREISE	JONATHAN	FRANCIS
DRESCHER	JEAN	M
DRESSI	PAOLA	PAOLA
DRISSI	SARAH	
DRURY	MARK	ALLEN
DUIFHUIZEN	KARA	TISHA
DUNBAR	DEBORAH	VANESSA REBECCA
DUNKIN	PETRA	ERIKA
DUNN	DAVID	REED
DUNNING FRY	JENNIFER	
DURAN	TAMARA	CHRISTINE
DUVALL	JONI	LEE
DYCK	RONNIE	
EBANKS	DYLAN	R
EBY	LAURA	ANN
EDEL	ADELE	CHARLOTTE
EDWARDS	BRUCE	WILLIAM
EDWARDS	IWAN	JAMES
EGGLESTON	ELIZABETH	ANNE
EGLESTON	RADOLPH	WILLIAM
EINSTEIN	LYNN	
EISENTRAUT	MATTHEW	ALAN
EIZAGA	CARMEN	M
EKTESSABI	MITRA	
EL HAILOUCH	IMEN	R
ELDAR	TAMAR	
ELENANY	SARAH	HAMDY
ELLINGTON	PETER	CHAFFEY BEATY
ENDE	TARA	LYN
ENDO	RINKO	
ENGLAND	ANDREA	LYNN
ENGLER	TIMOTHY	MERIDETH
ENGSTROM	LAURA	
EPPE CHAMBERLAIN	STEFANIE	
ERBEY	ELSIE	ELAINE
ERDMAN	ASHLEY	ELIZABETH
ERENTZEN	CAROLINE	ANDREA
EREZ	TOM	
ERSKINE–HILL	PATRICIA	ROSWELL
ESKEY	MICHAEL	THOMAS
ESMONDE–WHITE	HILARY	DALE
ESMONDE–WHITE	DELLIANA	ROSE
EUGSTER	PATRICK	THOMAS
EULERT	JOSHUA	ALFRED
EVANS	LYNDA	BARBARA
EVANS	LYN	
EVERITT COLEMAN	PATRICIA	ELIZABETH
EWEN	LAURA	JANE
FACCIN	GIULIANA	
FADDOUL	KRISTINA	KEENAN
FAIRWEATHER	SUSAN	LYNN
FAKHOURY	ELIE	
FALCONER	JENNIFER	KATHLEEN LIVINGSTON
FALK	TIAGO	HENRIQUE
FANG	BING	
FARAJI	SAYENA	
FARQUHAR	ZAVARA	ELIZABETH LEVA
FARRELL	TODD	CHARLES
FARRELL	DAVID	ROGERS
FARSEROTU	NICHOLAS	LAURENT
FEATHER	JENNIE	BALL
FEBLES–FRANK	HANS	
FEDERICO	LORENZO	
FEINENDEGEN	LUDWIG	E
FELLING	JOHN	STEPHEN

Last name	First name	Middle name/initials
FELTHAM	TERRI	LYNNE
FENG	NANCY	N P
FERGUSON	LAURA	BELINDA
FERGUSON	JACQUELINE	ELAYNE
FERGUSON	NORMA	JEAN
FERLAND	DENIS	
FERRAROTTI	LAURA	VITTORIA
FERRAROTTI	MARISA	FRANCESCA
FERRIES	JAMES	JOHN RONAN
FETHERSTONHAUGH	CLAIRE	C
FETKO	ERIC	ARTHUR
FIEDOROWICZ	GRACJAN	
FIGIEL	ANNA	MARIA
FISCHER	NORBERT	PETER
FISHER	AVRIL	JAYNE
FITZHUGH	EDWARD	ANTHONY HENRY
FITZSIMMONS	GARNET	ERICA
FLANDERS	DEAN	JAMES
FLOOD	BRONWEN	ELEANOR
FLYNN	DENNIS	ANDREW
FOCH	CATHERINE	EDUARDA TERESA
FOLLIOTT	LAURIE	
FONG	BRANDON	GEI TING
FONG	PAMELA	ANNE
FONG	MATTHEW	
FOO	MALCOLM	SHIH MIN
FORCELLA	BRUNO	PIERROT
FORD	KATHARINE	TRACY
FOREMAN	JEREMY	PHILIP
FOREMAN	KARIN	LYNN SWEENEY
FORTIN	DANIEL	JOHN
FORTUNE	OLIVIA	ROSE
FOSTER	JAMES	MICHAEL
FOX	JOANNE	
FOX	CLARA	W
FOX	LISA	J
FRANCIS	ADAM	JAMES
FRANJOU	LIONEL	CLAUDE PASCAL
FRANK	JANET	LYNNE
FRASER	SHANNON	MARGUERITE
FREED	MARK	RONALD
FREEDMAN	LAURIE	JOAN
FREEMAN	NAOMI	LEA
FRENCH	MEGAN	ANNE
FREUDIGER	BRIAN	
FRIEDELMANN	RUTH	
FRIEDMANN	SANTIAGO	I
FRIESEN	ERICA	MICHELLE
FRIZ	PETER	CHRISTIAN
FUJIMURA	MARIKO	
FUJISHIMA	MITSUO	
FURUI	MASANO	
FURUI	JOJI	
GAERTNER	LORIN	SIEGFRIED
GAETTELIN	DIANNE	LYNN
GAGE	GEOFFREY	STEPHEN
GAINOR	MARK	JOSEPH
GALAMA	SARAH	BARBARA
GALITZINE	PETER	DIMITRI
GALLINAUGH	WILLIAM	GRAY
GARDNER	BARBARA	SUSAN
GARNIER	ARNAUD	PIERRE
GARSIDE	BENJAMIN	JAMES
GATES	MADELEINE	P
GAUBA	AMANDEEP	SINGH
GAUBA	DEVENDER	
GAUDENZ	URS	DOMINIC
GAUGER	DEREK	KAZAN
GAUGHAN	HANNAH	ELIZABETH
GAUTHIER	DANIELE	
GAVIOLA	BRIGITTE	BEQUET
GAYNOR	MARY	LOUISE
GEIGER	JUDITH	
GELBER–LASSERS	MICHELLE	MARGUERITE

Last name	First name	Middle name/initials
GELPKE	ARIANNA	
GENDRON	ROBIN	
GENDZWILL	DON	JOHN
GERA	NICOLE	JACQUELINE
GERRITY	JAMES	RICHARD
GETCHELL	SUSAN	J
GETTINGS	NATHAN	DALE
GHATALIA	SHILPA	ARVIND
GHAZOUANI	KEVIN	L
GILBERT	EMIKO	S
GILL	TIMOTHY	ELLIOTT
GILLIES	ANDREW	SAWYER
GIROUX	CHANTAL	RAYMONDE
GIUDICE	ENRICO	SIMON
GLAVE	JAMES	TREVOR
GODA	AKIRA	
GODDARD	MICHAEL	ROBERT
GODEST	CONSTANCE	M
GOETZ	KARIN	BARBARA
GOGELA	NIKLAS	
GOH	DAE	GUN
GOLD	NANCY	MARIE
GOLD	DIANE	
GOLDBERG	TATJANA	
GONZALEZ	SANDRA	ELIZABETH
GONZALEZ GARCIA	MARIA	TERESA
GOOD	AARON	DANIEL MOORE
GOODE	STEPHANIE	JANEL
GOODIN	BRETT	GARRETT
GOODRICH	REBECCA	SPANG
GORDON	FRANCES	JANE
GORRIGAN	GWYNETH	EVELYN ALEXANDRA
GORSKI	CHANTAL	JULIANE
GORSKI	KRISTEN	JANINE
GOUTHWAITE	PEGGY	LEE
GOUVEIA	LISA	MARIE GRACE
GRACY	KIMBERLY	NOELLE
GRAF JILNSKI	SILVIA	CHRISTINA
GRASSI	PAUL	JOSEPH
GRAVE	MELANIE	
GRAVOUEILLE	HUBERT	
GRAY	WILLA	JANE ELIZABETH
GREAVES	IAN	ALEXANDER
GRECO	CHRISTINA	MARIE
GRECO	TOMMASO	DAVIDE
GREEN	MICHELLE	RENEE
GREEN	ALISON	JANE
GREGORY	FRANCES	ANN
GREGORY	SHEREE	KATHERINE
GRIFFIN	NICHOLAS	JOHN
GRIGONIS–DEANE	ELIZABETH	MARIE
GRIGSBY	JESSICA	LILIAN
GRINSTEAD	JAMES	NICHOLAS HAMLIN
GROENEVELD	MARTIJN	REINIER
GROSSMAN	NATHALIE	SUNJA
GROVE	LACHLAN	ALEXANDER
GROVE	GRAHAM	LLEWELLYN
GROVE	DUNCAN	ANDREW
GROVES	SAMUEL	CARDER
GRUBER	AMIR	MAX
GRUENENFELDER	PASCAL	ALEXANDER
GRUNWALD	GLEN	EDWARD
GRUSZECKI	RAFAEL	
GU	JIENI	
GUMMERUS	NICOLE	SUSANNE
GUNOLD	KEVIN	STEPHAN
GUNOLD	PATRICK	ALEXANDER
GUNTER	WILLIAM	DANIEL
GUPTA	NICOLE	RENE
GUTJAHR	MARJAN	CHRISTINE
HABERER	THOMAS	PAUL
HAEHN	THOMAS	
HAFNER	MONICA	
HAGENBUCHLE	MERET	

Last name	First name	Middle name/initials
HAGIMORI	SHIGERU	
HAID	ISABELL	TANJA
HALLAM	PAUL	WHITELEY
HAMADA	NATSUKI	RAY
HAMILTON	SHERIDYN	KAYE
HAMPL	MICHAEL	GEORGE
HAN	MOONSUK	
HANOVER	CHARLES	E
HANSEN	DAVID	FRANKLIN
HANSEN	MORTEN	
HANSON	HENRY DAVID	GAREAU
HARDEN	HANNAH	SEGOLENE CECIL
HARDER	INGRID	SUSANNAH
HARDIE	HILLORY	LOVE
HARIU	ATSUKO	
HARIU	YASUHIRO	
HARKINS	PATRICK	HALEY
HARMATARE	SIRJE	
HARRIS	SUSAN	EVE
HARRIS	ZELDA	BARBARA
HARRIS	TERRY	LYNN
HARRIS	TRACEY	DALON
HART	EMMA	ALEXANDRA T
HART	JOHN	ANDREW
HARTMAN	ERIC	M
HARUN	HAPPY	
HASHIMOTO	KEIJI	
HASSAN	KHALID	M
HASSAN	QGASIM	
HATCH	MARY	KATHRYN
HATORI	MASAKAZU	'-
HATT	ARTHUR	JEAN
HAWLE	JOEL	MALUHIA
HAYDEN	ANDREW	BRYAN
HAYDEN	JAMES	BRYAN
HAYDEN	SUSAN	JANE
HAYNES	MARGARET	JANE
HAYTON	GREGORY	CHARLES
HE	CHENGWEI	
HEATON	NICHOLAS	J
HEBERT	PATRICIA	LYNN
HEENAN	RODNEY	STONE
HEESTAND	JOHN	WARREN
HEGARTY	ORLA	
HEINIG	NORBERT	
HEINRICH	CHRIS	KAICHI
HEIZ	DENIS	
HEMMENDINGER	ANNA	
HENDERSON	SEAN	LESSLEY
HENDRICKSON	BRADLEY	JAMES
HENRY	RUSSELL	CHARLESWORTH
HENRY	WILLIAM	
HENZI	PAUL	FELIX
HERNON	ERIC	CHRISTOPHER
HERTEL	RUSSEL	EDWARD
HESSELBARTH	JANA	
HEWITT	PATRICIA	ANN
HEWITT	PAUL	JOHN
HIBBERD	DOUGLAS	GREGORY
HICKEY	MICHAEL	ANTHONY
HIERMAN	RICHARD	CRAIG
HIGGS	PAUL	ANTHONY
HILL	ANN	BERNICE
HILSENBECK	LINDSEY	FRANCES
HINDS	SAMUEL	JOHN
HIOKA	SATOMI	
HIRAI	MASAHITO	
HIROSE	RICHARD	MOTOTAKA
HODGSON	JAMES	S
HODGSON	VALERIE	C
HOEKSTRA	MICHAEL	ALEXANDER
HOFMAN	JAMIE	AKKE
HOGAN	KRISTINE	
HOLBERT	STEVEN	LEE

Last name	First name	Middle name/initials
HOLST	REBECCA	
HOOTON	BRETT	ANDREW
HOPPE	DANIEL	JOSHUA
HOSBACH	ANDREAS	MARKUS
HOUGI	RONI	CHARLES
HRYNEVYCH	MICHAEL	ANDREW
HUA	JIACHEN	
HUANG	TONY	
HUANG	HUI	
HUBER	JANET	RUTH
HUCKER	WESLEY	DAVID
HUFFMAN	JOAN	EVELYN
HUGHES	RYAN	DAVID BENJAMIN
HUGO	CATHERINE	MARIE
HULST	DANIELA	
HUMES	DONALD	CARL
HUNG	MARIA	LILLY
HUNT	MARGARET	FRANCES
HURLEY	IAN	DOUGLAS
HURST	CRISTIANA	NORI
HUSAIN	IRAM	
HYUN	DUK	JOO
INABA	SEIICHIRA	
INDER	MICHELLE	J
INGLESON	DAVID	WILLIAM
INNES	SARAH	
INVERNIZZI	FRIEDERIKE	IRENE SABINE EDITH
ISBELL	KYLA	JANE
ISHAK	RONALD	
ISHIKAWA	HARUKA	
ISHIKAWA	TORU	
ISHIOKA	HARUO	
ISHIZUKA	HIROAKI	
ITABASHI	YUKARI	
ITO	ASAKO	
ITO	YOJI	
ITO	OSAMU	
ITO	TOSHIRO	
IWAIZUMI	MAINA	
IWASA	TOMOKO	
IWASAKI	MAKI	
JACKSON	DARREN	
JACOBS	JEAN	MARIE
JACOBSEN	DONALD	L
JADERLUND	BETTINA	ANN
JALBERT	ELISABETH	MARIA IRENE
JAMAL	SHELINA	M
JARRELL	BARRETT	A
JARVIS	JAMES	JOHN
JAZI	MAZEN	RACHID
JEFFERS	ANN	
JEFFERSON	OLIVER	
JENKINS	CHRISTOPHER	M
JEZINA	ADRIAN	JOSIP
JI	XIAO	A
JIANG	CHRISTOPHER	
JOHN	FRANZ	M
JOHNSON	MICHELLE	KLAZINA PIETERKE
JOHNSON	VIRGINIA	
JOHNSON	LUKE	NEALE
JOHNSON–ABBOTT	SYBIL	JOYCE
JOHNSTON	SAMUEL	SCOTT
JOHNSTON	CYNTHIA	ANN
JONES	BENITA	ROSALIE
JONES	SARAH	ELIZABETH
JONES	ELLEN	MAMAHON
JONES	CHARLENE	NORMA
JONES	SUSAN	JOAN
JONES	PETER	
JOSELIN	DOROTHY	ANNE
JUD	ANDREA	KATJA
JUNKER	TAMARA	ANN
KAGOMA	YOAN	YVES
KAHL	STEPHAN	

Last name	First name	Middle name/initials
KAKUDA	YUKIO	
KAMEYAMA	SHINJI	STEVE
KAO	ERIC	FONG CHI
KARAGIANNIS	DIMITRIOS	
KARLBERG	NICHOLAS	DAMIAN MARK
KARLSEN	KARIN	ELIZABETH
KASE	CHRISTOPHER	
KASE	ALLESON	
KATAPALLY	VIJAYALAXMI	
KATZ	AMIR	
KAUFFMAN WEILL	SUZY	MELISSA
KAY	PETER	ANDREW MACK
KAZANJIAN	TAMAR	NICOLE
KEDJORA	STEPHANAES	
KEELAN	THOMAS	RICHARD
KEISLAIR	MARJOLEIN	DOMINICA
KELLER	BARBRA	FELDPAUSCH
KELLY	BENJAMIN	THOMAS
KELLY	DORA	GLENN
KENDALL	DAVID	HENRY BERENGER
KENNEDY	CATHERINE	GISELLE
KENNETT	MATTHEW	JAMES
KENNETT	BROOKE	CASEY
KERNER	DAVID	LASSEN
KERR	SHALON	MIRA
KERR	DOUGLAS	STEVEN
KERR	DYLAN	MICHAEL RONALD
KESTNER–GALAMA	KRYSTAL	ANN
KHALFAN	NOORAMI	
KIDRON	MAYA	
KIM	KYUNG–HEE	
KIMURA	YUKI	
KING	KENNETH	GLANVILLE
KING	LYDELL	JASON
KIRK	MACKENZIE	AUSTIN
KIRSCHNER	ANTHONY	LOUIS
KITAOKA	CHISAKI	
KLAHR	ALEXIS	JEAN CHARLES
KLEIMAN	RONA	LYNN
KLEIMAN	MARK	JEROME
KLEINBLOESEM	JOHANNA	
KLEYN	JULIAN	PHILIP TAKESHIRO
KLINE	ELLA	MADELINE BIRLEY
KLOSKA	RANDALL	
KLUSIK	ANN–KATRIN	
KO	BO	KYUNG
KOBAYASHI	MUSASHI	
KOBAYASHI	KAZUKO	
KOBAYASHI	TOSHIYUKI	
KOBAYASHI	MASAMI	
KOCH	SVEN	
KOENIG	JUTTA	RENATE
KOEPSELL	CAROL	JEAN
KOHLER–JIMENEZ	MICHELLE	MIRIAM
KOJIMA	CHIKAKO	
KOLTES	STEVEN	FREDERIC
KOMATSU	MINORU	
KOMURA	NIIMA	
KONIG	MARTHA	JANE
KOPP–TANAKA	NOEMI	
KOREN	OLGA	
KORENBILT	SIMEHA	
KORTBEEK	KATHY	VICTORIA
KOSSMANN	MAXINE	ELIZABETH
KOST	GENIA	
KOST	JOSEPH	
KOSTER	ALEXIA	LYNN
KOSTOLNIK	CAROL	ANN
KOUROUVAKALIS	NICHOLAS	
KOUROUVAKALIS	GEORGE	DEMETRIOS
KOVACEVIC	DUSAN	
KRACHT	MARCUS	GERHARD
KRAMME	RAINHARD	G
KRASNA	DANIELA	

Last name	First name	Middle name/initials
KRISTIANSEN	JAN	HARALD
KRITIKOS	JONATHAN	JAMES
KROEKER	JOHN	
KROETTINGER	SOPHIA	LINDE
KRONENBURG	LISA	ELAINE
KRUG	ANNE	BARBARA
KRUGER	SABINA	
KUDENHOLDT	KAI	
KUEHNBAUM	ANN	LOUISE
KUNIYOSHI	AKIHA	MANUELA
KUNZ	WOLFGANG	PATRICK
KURASHINA	YUKIE	
KUROKAWA	MIKI	CYNTHIA
KUROKI	SHOICHI	
KUSUMOWIDAGDO	JOZEF	SUBROTO
KUZMA	MICHAEL	JOSEPH
KWAN	KENNY	SIU CHI
KWOK	STANLEY	KAR KUEN
KWONG	PUI	LING
LAANE	NICHOLAS ANTOON	KEVIN MARIE
LABARTHE	JULES	JUDD
LAM	FREYA	KEZIAH
LAMBERT	MARGARET	ELIZABETH
LAMBERT	MARK	GARY
LAMBERT	CLINT	B
LANGFORD	VICTORIA	SOLVEIG
LANK	HANNAH	MONICA
LANZON–HOLMAN	CHIAH	STAR
LARIMER	SUSAN	JANE
LAROCHETTE	ALAIN	MICHAEL
LARSEN	DANA	MEEGAN
LATCH	RICHARD	WILLIAM
LAU	HOK	WAI
LAUTERMILCH	DARYL	GORDON
LAVERICK	ERIC	W
LAWRENCE	HOLLY	MARIE
LAWS	CHRISTIAN	SIMON
LAWSON	KAREN	LARIMER
LAWTON	KARIN	JEAN
LAWTON	JOAN	DONNA
LAZARUS	ROSS	
LE	HAINI	
LEAL	JUAN	JOSE
LEE	YOUNG	CHUN
LEE	KAREN	MING
LEE	DANYELA	PETRA SHU SEN
LEE	JONATHAN	SANTOS
LEE	HUI–JU	
LEE	PING	HUA
LEE	MUH	RONG
LEES	SCOTT	ALLAN
LEGAULT	BRIAN	J
LEIBINGER	LAURENCE	PETER BERTHOLD
LEMIEUX	MELISSA	
LEMZOUDI	NADIA	
LERNER	DEBORAH	KAY
LESJAK	ANDY	JOHANN
LEUNG	BONNIE	WAN SZE
LEVETT	CHARLES	JOHN WESLEY
LEVY	AVIVA	DANIELLE
LEVY	BENJAMIN	
LEWIN	SARAH	ANNE
LEWIS	CAROL	JEANNE RAY
LEWIS	RYAN	FAIRHURST
LEYES	THOMAS	J
LI	HOI	TING VANESSA
LIANG	OLIVIA	
LIANG	HANS	
LIANG	KWUI	SIANG
LIAO	ERNIE	
LICHTENSTADT	AVIAD	
LIE	SYLVIA	SIU MI
LIE	FRANK	JONG PENG
LI–LEGER	CORA	

Last name	First name	Middle name/initials
LILEIKIS	CAROL	ANN
LIM	LIC	KIAM LINOLN
LIM	MARY	YULING
LIM	ALLYANNA	ANG
LIM	ININ	
LIN	CHUN–YING	FRANK
LINDSEY	SAMAMTHA	MARIE
LINDSEY	KATE	SARAH
LINDSTROM	GEORGE	WILLIAM
LIPPIETT	AMBER	LEIGH
LITSIOS	ACKLEY	GREGORY
LITVAK	TRIXIE	E
LIU	JULIA	JOANNA
LIU	BINHE	
LIU	YUXI	
LIU	YUCHEN	
LLOYD	STEVEN	MARK
LLOYD	MARY	
LO	MAN	FU
LO	YU–YING	
LOCKETT	RAMIEL	COVANCE
LOCKHART	LEAH	MICHELLE
LOEPPKY	KELBY	REBECCA
LOESCHE	PETER	MATHIAS
LOMAX	CHRISTINE	ANN
LONEY	DINAH	
LONG	MEGAN	KATHLEEN
LONGLEY	LILY	SAMANTHA
LOPOUKHINE	MARY	ANN
LORENZ	RYAN	GORDON RENNER
LORME	KENNETH	JOHN
LOW	ROBERT	GRAHAM MALCOM
LOW	CHARISSA	KIRSTEN
LOW	JOY	ZEE FOON
LOWE	GWENDOLYN	KWONG
LOWENSTEIN	GEMMA	CLAIRE
LOWENSTEIN	NATALIE	ROZENTAL
LU	JULIE	SU–LI
LU	JERRY	YU–CHI
LU	PEI–CHUN	
LU	YONGMEI	
LUCAS	SUSAN	MARIE
LUCO	BENJAMIN	
LUCO	ROBERT	MICHAEL
LUK	VINCY	CAROL
LUMIS	ERIC	PETER
LUN	VICTOR	WAI–TO
LYNAM	JAMES	FENNEY
MAANI	KAMBIZ	
MACDONALD	ISAIAH	ERNEST NORMAN
MACFABE	LESLIE	A
MACHOLD	CLEA	ALEXANDRA
MACKENZIE	JAMES	STEWART
MACKENZIE	MILDRED	
MACLEAN	KATHARINE	ALEXANDRA
MACLENNAN	DAVID	NELSON
MACLEOD	KRISTIAN	ALEXANDER
MACMILLAN	DAVID	
MADDALONI	JOHN–MARKUS	HARRIS
MADDOCKS	GAVIN	NEIL
MADDOX	BRONWEN	MARIA
MADRABAJAKIS	ALEXANDER	GEORGE ELEFTHERIOS
MAEKAWA	IKUKO	
MAGEL	LILIAN	K
MAGISSON	EMMANUEL	REGIS
MAILLETTE	PATRICIA	D
MAIR	TAMARA	ROSALIA
MALDACKER	MAXIMILIAN	EDUARD
MANELES	STEPHANIE	ASHLEY
MANKI	FARZANA	
MANNING	NAOMI	LISA
MANSUR	DEREK	JORDAN
MANZKE	KETEVAN	BURDULI
MARCHANT	JASON	WILLIAM ANTHONY

Last name	First name	Middle name/initials
MARCHIORI	PAOLO	
MARINESCU DE HARVEY	RODICA	
MARKHAM	BRIAN	CHRISTOPHER
MARLATT	SUSAN	EILEEN
MARSHALL	KATHARINE	
MARSHALL	NICHOLAS	EDWARD
MARSIAJ	JOANA	SOPHIA
MARSURA	PATRIZIA	
MARTELL	EDWARD	SAUNDERS
MARTENS	NANCY	LEE
MARTIMBEAU	CLAUDE–EMILIE	MARTIMBEAU
MARTINEZ DE OLIVEIRA	FERNANDA	
MARXER	CLARISSA	JOANNA
MASON	JAMES	LEONARD
MASSE	JEAN	PIERRE
MATHERS	JENNIFER	JONN
MATSUO	MINAMI	
MATSUO	SHOJI	
MATSUO	KATSUMI	
MAUERSBERGER	JASON	RICHARD
MAXWELL	TOBIAS	
MAY	BRIAN	WILLIAM
MAYER	RICHARD	LEE
MAYES	ERIC	LEIGH
MAZURYK	MICHAEL	ANTHONY
MCBARRON	MARTHA	ASHBROOK
MCBRIDE	REENA	DARRAH
MCCALLUM	JANET	LOUISE
MCCANDLESS	CONNIE	JEAN
MCCARTHY	SCHMARRAH	AKIISHA
MCCORMICK	ALEXANDER	FRANCIS
MCCOY	LIZA	L
MCCRACKEN	MICHAL	RUTH
MCCULLOCH	DEVON	
MCDONALD	HOWARD	HEATH
MCDONALD	HAMISH	CALLUM
MCDOWELL	JOHN	
MCDOWELL	LYNN	
MCFARLANE	PAULA	LEE
MCGILL	CHARLOTTE	EVELYN
MCKENDRY	KRISTEN	
MCKENDRY	BARRY	WILLIAM
MCKISSOCK	DANIEL	JAMES
MCLAUGHLIN	DENNIS	A
MCLEAN	JOCELYNE	
MCLEAN	CHARLES	N
MCMANUS	TIMOTHY	JOSEPH
MCMULLEN	DANIELLE	ROSE
MCNALLY	JOHN	KEITH
MCNAMARA	JOAN	MARIE
MCNEIL	KATHLEEN	LEE
MCROBB	KATE	ELIZABETH
MCSHARRY	NIALL	M
MCVEIGH	SHAWN	PHILIP IKAIKA
MEDAWAR	PETER	NICHOLAS DAVID
MEI	XUEFENG	
MEIER	BERNHARD	FRANZ
MEISTER	TRETA	MARIE
MELANSON	PAUL	ALBERT
MEREZ	ANNETTE	
MERKLI	TOBIAS	BALZ
MERNAGH	FIONA	ELIZABETH ANN
MESSERLI	MARCO	WEILONG
MEYER	MELANIE	ANNETTE
MEYERS	SAMANTHA	J
MIANI	KIMBERLY	LAURE
MICHAEL	THOMAS	
MICKLE	GARY	RALPH
MIDDLEBROOK	ANN	
MIDDLETON	KURT	ALLEN
MIHELIC	ALBERT	WILLIAM
MIKOSZ	FILIP	
MILKOVICH JR	MARTIN	JAMES
MILLER	DODIE	MAHAFFY

Last name	First name	Middle name/initials
MILLER	ELIZABETH	SUSAN
MILLWOOD	BUDDY	WAYNE
MILMAN	ISA	
MILNE	RICHARD	ALLEN
MIMATSU	SAORI	LAURA
MISIEK	MARTE	ELIZABETH
MIYAKE	DAISUKE	
MODY	ALISHA	TARA
MODY	CYRUS	JAMSHED
MOELLNER	EDWARD	AMEDEO
MOEN	SHERYL	ANN
MOHAMED	FARAX	SOOFE
MOLYNEAUX	SHARON	RUTH
MONAHAN	PAUL	FRANCIS
MONDILLO JR.	DOMENIC	
MONIUK	ANNE	MARIE
MONSEN	CHRISTIAN	REKSTEN
MONTAQUE	MARY	ELLEN KATHRYN
MONTELLE	PIERRE	GRANT
MONTPLAISIR	NANCY	
MONTVAI	BALAZS	
MOON	DAVID	R
MOOR	HILARY	CATHERINE
MOORE	LINDSEY	SARAH
MOORE	ROBERT	
MOORES	JOSIAH	MARK
MORE	HEATHER	DIANE
MORETON	CLAIRE	
MORGAN	CHARLES	JOSEPH
MORGAN	ROBERT	ELLIOTT
MORICE	ANTHONY	ROBERT
MORIN	JULIE	
MORSE	RACHELLE	PAMELA
MORSELLI	RUGGERO	M
MORTENSON	LEIF	AARON
MOSELEY	LUKE	
MOSER	JASON	FELIX
MOSER	MARISA	ANNE
MOSKER	ANDREA	ANTONIETTE
MOSS	MARI	ANN
MOSZKOWSKI	FAYE	
MOULD	PENELOPE	J
MUERRENS	ALAIN	
MUI	WUNLING	JENNIFER MARY
MULLEN	KIRSTEN	BELINDA
MUNTEAN	KALIYA	CAYENNE
MUNZ	MARTIN	RETO
MURGAN	RAJAN	
MURPHY	COLIN	GEORGE
MURRAY	SARAH	LOUISE
MUSQUETIER	MONIQUE	ARJANNA
MUSQUETIER	MICHAEL	
MWAMBU	ALQAMA	AMRU
NAITO	TAKASHI	
NAKAJIMA	FUMINITO	
NARISAWA	RYO	
NATALE	LOUIS	FREDERICK
NATH	ZOE	
NATHAN	DELVIN	
NAZMUL	SYEDA	
NEEDHAM	ANJA	KATARINA
NEEF	REINHARD	JAMES
NEIZERT	ASHLEY	KATHLEEN
NELSON	LINDA	BETH
NELSON	WILLIAM	DOUGLAS
NELSON	GILLIAN	
NEO	SU–REN	
NEUFELD	KENNETH	W
NEUFELD	LESLEY	M
NEUMANN	ROBERT	MICHAEL
NEURAY	GILLES	A
NEVILLE	GREGG	ALEXANDER
NEWELL	PAUL	DWIGHT
NEWLYN	MARGARET	DE LASHMUTT

Last name	First name	Middle name/initials
NG	DAVID	THOMAS KUO CHUNG
NG	KEVIN	CHUN–YIN
NGUYEN	KIM–ANH	
NI	JING	
NI	LIONEL	MING–SHUAN
NICHOLAS	ASHA	
NICKEL	JUDY	JUDITH
NIEMAN	TRAVIS	RANDALL
NIGHTINGALE	BARBARA	CHRISTIENA
NIJNENS	PHILIP	SPENCER
NILES	KIRSTEN	MARIJKE
NISHI	MIHO	
NISHINO	KEN	
NOELLE–KARIMI	CHRISTINE	
NOLAN	ROBYN	LYNNE
NOLLER	MARTEN	STEVEN
NOMURA	SHINJIRO	
NORMAN	JANICE	L
NORMANDEAU	ANNE–MARIE	
NOSER	STEPHAN	ADAM
NUSINER	FRANCESCO	
NUSSBAUMER	BRIGITTE	REGINA
OBEROI	RADHIKA	
O'BRIEN	LOIS	A
OCHIAI	YUKARI	
O'CONNOR	MADELINE	
O'CONNOR	SEAN	
ODDY	CATHERINE	MARY
O'DONNELL	PATRICK	J
OGURA	YUKO	
OH	JAE–HYUK	
OKAMOTO	SACHIKO	
OKAZAKI	HIROSHI	
OKUNO	KAYOKO	
OKUNO	KATSUHIRO	
OLDFIELD	BRONYA	
OLIVESTONE	DAVID	
OLTHUIS	JONATHAN	ALEXANDER
OM	KISUM	SUN
ONDERCIN	LUBOMIR	K
ONODERA	TEIKO	
OPDAM	LILIAN	CHRISTINE
OPFERMANN	ERICH	CHRISTOPH
OPIE	TIMOTHY	MARTIN
ORFALD	DAVID	RUSSELL
ORTON	SAMUEL	TORREY
ORUI	CHIAKI	
ORUI	TSUKASA	
OTA	MAMI	
OTA	SHIGERU	
OTANI	MOTOKO	
OTANI	KOICHIRO	
OTIS II	TERRY	LEE
OTTENHOFF	JANNA	SOPHIE EUGENIA
OTTO	MARINUS	J
OVERAND	KIRK	FRANKLYN
OZDIL	SELCUK	
PAETKAU	ROSEMARY	JEAN
PALLERES	CRISTIANA	VAZQUEZ
PAN	ZHENGZHENG	
PANETHERE	NICOLE	MARIE
PANIWALA	ABDUL	RAHIM
PAPANASTASIOU	CHARILAOS	ANASTASIOU
PAPAURELIS	MARIJA	CECILIA NARKUS
PARADISGARTEN	MATTHEW	
PARASKEVOPOULOS	KATHLEEN	
PARENTEAU	HUGUES	
PARK	RACHEL	HUEI–SOOK
PARK	YOUNGOK	
PARK	KYUNG	HO
PATE	ALAN	DAVID
PATE	KINLEIGH	ERIN
PATE	MICHAELA	JORDAN
PATEL	CHARULATA	BHULABHAI

Last name	First name	Middle name/initials
PATEL	ANITA	N
PATEMAN	CHRISTOPHER	EDWARD
PATTON	BARRY	ALAN
PAULOCIK	CHRISTINE	
PEACOCK	SEBASTIAN	JAMES HUNTER
PEDEN	NORMAN	ARTHUR
PEGGION	GERMANA	
PEIFFER	DOUGLAS	FRANCIS
PELIT	KEMAL	
PENNER	REBECCA	PAULINE
PERKINS	LAVELLA	NORENE
PERRIER	MARC	
PERRY	PATRICIA	D
PERSON	JOHN	JACOB
PETER	CLEA	FLORIDA
PETERSON MINTER	MARIANNE	FRANCHOT
PETRINI	CIPRIAN	LAURENTIU
PETROVIC	OLGA	
PETRUS	BRIAN	ANDREW
PETRUS	ANTHONY	WAYNE
PETTAU	STEPHANIE	MARIE
PFEIFFER	CLAUDIA	MARCELLA
PFLIGER	CHARLES	DANIEL
PHARR	LOUISE	A
PHORNPRAPHA	PRAPUTT	
PICHLER	REGINE	JOHANNA
PIEKLO	BARBARA	
PIIRONEN	KIRSTI	ELEANOR
PILARSKI	PATRICK	MICHAEL
PILKINGTON–MIKSA	SOPHIA	KATHERINE
PINTO	JULIANE	
PIZZO	DAMICA	MARIE ANNE
PLETT	EDDY	BERNHARD
PLEUGERS	ISABELLE	MARTINE
PLOWRIGHT	MARCUS	ACHILLE
POHL	NICOLE	
POINT	VIRGINIA	LEE
PONIMAN	ANGELICA	
POOLE	JUSTIN	ELLIS
POSTMAN	BRENDAN	KENT
POSTMAN	DAMON	LEIGH
POTTENGER	TORY	ANNE
PRATT	KAREN	A
PRECHT	MAGNUS	
PRESCOTT	WILLIAM	JOHN COMPER
PRETNAR	KATHARINA	MARIA
PRIETO	MAXIMILLIAN	LEE
PRIETO	DAVID	ALEXANDER
PRIETO	ERIC	ISAAC
PRINCE	SAMANTHA	RUTH
PRIORE	STEFANO	LO
PROCTER	KRISTIN	M
PROULX	GRATIEN	
PRUNTY	AMARA	DENICE CARIGNAN
PUA	JEFFREY	NGUYEN
PUDWELL	HEIDI	AMANDA
PURNAMA	VANESSA	ILAVYNIA
PURVES	JAMES	ANDREW
RABENECK	LINDA	
RAD	HAMID	
RADIN–ROUG	IAN	LARS
RADTKE	KRISTIN	JENNIFER
RAGAZ	CAROLYN	ALLISON
RAGY	SABINE	HELENE
RANDAZZO	CHRISTOPH	STEFAN
RAO	SABINA	
RASMUSSEN	ANDREW	COLIN
RAVENSBERGEN	VERA	
REA	SHAWN	GAYLE
REAUME	GREGORY	MARK
REDIKER	CAROLE	SUSANNE
REDKAR	ARCHANA	S
REED	ROBERT	ANDREW CARLTON
REED	CHRISTOPHER	LAURENCE

Last name	First name	Middle name/initials
REEVES	ANDREW	
REGNER	GERHARD	
REGUEIRO	ALANO	FLAVIO
REIMER	MATTHEW	IAN
REMINGTON	LAURA	JEAN
REMOY	SEBASTIAN	
REN	CHUN	LIU
RENGIFO	JULIANA	
RENTZ	LAURI	ANN
RENTZ	BARRY	LYLE
REYNOLDS	CATHERINE	ANNA JANE
RHEE	MONICA	YUN
RICCI	FLORENCIA	
RICE	GREGORY	PATRICK
RICHARDS	MEGAN	GAY
RIDDERVOLD	HANS	O
RIDDY	ADAM	J
RIFAT	SANDRA	LOUISE
RIGGS	EMILIE	LYNN GARAT
RIOUX	JEAN	SEBASTIEN
RISCHER	STEFAN	FORBES
RISSEEUW	MEAGAN	
RIVAS	JUAN	ANTONIO
RIVERAL	DEO	RODRIGO RIVERA
ROACH	DAVID	JOHN
ROBERTS	DENISE	MARIE
ROBERTSHAW	LEONIE	ROSE
ROBILLARD	MARIE	LISE CHANTAL
ROBINSON	DEBRA	JANE
ROBINSON	REBECCA	KATHLEEN
ROBINSON	FREDA	M
ROBSON	JANET	PATRICIA
ROCHON	EILEEN	CAROL
ROCK	COSMO	STANLEY
ROCKWELL	HEIDI	H
RODENHUIS	IRMA	E
RODRIGUE	LUCIE	
RODRIGUEZ	MICHAEL	
ROEBUCK	JENNIFER	ELLEN
ROEDER	NICHOLAS	ANDREW
ROEDER	CHRISTINE	ANTOINETTE
ROEDER	MICHAEL	THOMAS
ROGERS	SAMUEL	ALVIN
ROLNICK–CREMASCO	NAOMI	
ROMAIN	RONALD	VINCENT
ROMANOW	VALERIE	ANNE
ROONEY	PATRICIA	SUE
ROSBACH	CAITLIN	MARIE
ROSE	MARY	CLARE
ROSE	ERIC	SCOTT
ROSENBLOM	HANNA	V
ROSENBLOM	KARL	A
ROSENSTEIN	DEBORAH	CHARLOTTE
ROSENSWEIG	ANAT	
ROSKIES	DEENA	BRONSTON
ROSS	DAVID	JOHN
ROSS	KELLIE	
ROST	JOHN	KENNETH
ROTH	ANDREW	EUGENE
ROWAT	LENA	TERESA
ROWLEY	NATALIE	VICTORIA
ROY	PAOLO	DAVID
RUBIN	MAURY	DANIEL
RUBIO	JULIA	MIRIAM
RUSSELL	LAVERNE	SCOTT
RUSSELL	THOMAS	LEE
RUSSELL	HENRY	ALDEN VERPLANCK
RYAN	DANIEL	MICHAEL
SABANAYAGAM	RENUKA	
SAGI	MARJA	L
SAGI	MARJA	L
SAINT–PIERRE	LYNE	
SALIER	PORSCHE	J
SALIERNO	ALDO	THOMAS

Last name	First name	Middle name/initials
SALIOU–DIALLO	RASCHID	AHMED
SAMARA	NICHOLAS	
SAMARIN	JORGE	
SAMPSON	CATHERINE	JANE
SANDS	MICHAEL	THOMAS
SANTORO–DIAZ	FLAVIA	
SAPIN	GILBERT	JOSEPH
SARIDOU	KYRIAKI	
SASANUMA	SETSUKO	CECILIA
SAUNDERS	SUZANNE	MAREE
SAWAF	SAMMY	MAZEN
SCHAFFER	STEVE	
SCHALL	ERNEST	BRUCE
SCHALLER	YASMIN	
SCHARPF	SUSAN	THOMPSON
SCHEFER	URSULA	
SCHEMBRI	ADRIAN	PAUL
SCHERER	JEAN–BAPTISTE	CHESTER
SCHIMPF	BLAIR	RICHARD
SCHLAGEL	FEDERICO	ANTONIO
SCHLEIBACH	WILHELM	
SCHLEIBACH	ANNE	D
SCHLUEP	SAMUEL	DENIS
SCHMIDT	JULIEN	GERALD
SCHMITZ	DORIS	K
SCHNEIDER	KAREN	SELSER
SCHOLTEN	HELLY	NICOLE
SCHROEDER	MATTHIAS	
SCHROYENS	ANN	KATHLEEN
SCHUCK	SUSAN	
SCHUELLER	TANIA	DAVINA
SCHULTZ	GORDON	PAUL
SCHULTZ	KENNETH	RICHARD
SCHWIZER	ALEXANDRA	CARMEN
SCOBEE	BIRUTE	
SCOTT	ANNE	MARIE
SCOTT	RACHAEL	JANE
SCOTT	REBECCA	SARAH
SEAMAN	BENJAMIN	ROBERT
SEGEN	JOSEPH	
SEIERSEN	JULIE	LEE
SENRA	ANTONIO	FRAGOSO
SERRANO PEINADO	ADELA	
SEWARD	KEITH	ROBERT GEORGE
SHABAN	RULA	G
SHAFRIR	AMI	
SHAH	SEJAL	SIDDHARTH
SHAN	XIAOYONG	
SHANMUGANATHAN	PREMALA	
SHARP	NICOLA	ELIZABETH
SHASTRI	VALLABH	
SHAW	CHRISTOPHER	MALCOM
SHAW	CARL	DEXTER
SHAW	NEIL	BOYD
SHECHTER	YAEL	
SHEIKH	ABUSAAD	SAMAD
SHIACH	ALASDAIR	G
SHIBATA	KUMIKO	TAKAGI
SHIBATA	NOZOMU	
SHIBULAL	SAROJINI	D
SHINDLER	MICHELLE	LUCY
SHIOMI	MASAKI	
SHIPPEE	ADRIENNE	L
SHIROMA	NAGAKO	
SHUPE	GLENDA	DIANE
SIEGFRIED	DAVID	
SIMMONS	JULIE	ANNE
SIMS	JENNIFER	EFFIE
SIN	SEOHYUN	
SINCLAIR	PATRICIA	DREW
SINCLAIR	STACY	NOEL
SINGER	LOIS	VIRGINIA
SINGH	RAMINDERPAL	
SISSON	DEBRA	E

Last name	First name	Middle name/initials
SJAHRIR	PANDU	PATRIA
SJOBORG	STEIN	ROBERT
SMALL	ADELE	CHANA
SMALLWORTH	ANNETTE	LINDA
SMILANSKY	ALEXANDER	
SMITH	PETER	EDWIN
SMITH	KIMBERLY	ANNE
SMITH	HARRIET	ELISABETH
SMITH	KENNETH	VINCENT
SMITH	SACHIKO	
SMITH	DOUGLAS	STUART
SMOLDERS	JOHN–PAUL	
SMYTHE	THOMAS	ERIC
SOFTY	LAWRENCE	ALEXANDER
SOLON BIET	SAMANTHA	MARIE
SOMMER	RAPHAEL	CHRISTOPHER
SONG	XIAOMEI	
SORK	TYLER	JODA
SOW	ALHOUSSEYNI	
SPATZ	MARK	STEVEN
SPERLING	ADAM	DOV
SPERLING	SANDRA	MARIE
SPRINGSTEEN	MAREN	
SPROUL	SCOTT	ROBERT
SPRUTE	GERHARD	FRITZ
SRISUMRID	TAWEESUK	
STACKERYD	LISA	C
STAINER	MAXIMILIAN	GUENTER
STANCIOFF	MARIA	TERESA
STANLEY	GEORGE	WILLIAM SLOANE
STARR	SAMUEL	SIEGEL
STEBLER	BEATRICE	SUSANNE
STEEGE	ALEXANDER	JOSEPH GARNISS
STEEGE	BRIAN	ERIC
STEEL	DEBORAH	
STEIN	MATTHEW	JASON
STEINAUER	NIKOLAUS	HANS FELIX
STEINER	ROLF	THOMAS
STEPHENSON	RACHEL	ANNE
STERN	OLIVER	PATRICK
STEVENHAGEN	PAUL	
STEWART	EMMA	CHARLOTTE VANSITTART
STEWART	MICHELLE	LOUISE
ST–GERMAIN	MARC	PAULL
STIEGER	TIFFANY	JANE
STIEGER	JENNIFER	ANN
STIX	MADISON	ALLAN JAMES
STIX	KRISTYNA	ALICE RENEE
STIX	STEPHANIE	PAULINE
STORCHHEIM	LISA	FAITH
STORER	LEIGH	AMY
STRADA	MARY	ELLEN
STRAEHL	NICOLA	
STRANGE	ELIZABETH	LUCY
STRATTON	RACHEL	ANN
STRAUB	KRISTINA	LINDA
STRAW	BARTHOLMEW	JOHN
STRECKER	MICHAEL	JOSEPH
STREET	ARTHUR	GEORGE
STROME	VALERIE	LYNN
STUART	SHELAGH	
STUTZ	BRIAN	DAVID
SUCHE	ZOE	SUSANNE
SUGIURA	HIROKO	WOODLEY
SUHONEN	ANTTI	J
SURANA	CHANDA	
SUSSMAN	AARON	NATHANIEL
SUTANTO	EDBERT	
SUTCH	HANNAH	MARIE
SUTHERLAND	ROBERTA	DIENES
SUTTON	JEAN	
SUWANSIRI	CHANTIMA	
SUZUKI	FUJIO	
SUZUKI	YASUKO	

Last name	First name	Middle name/initials
SUZUKI	SHOKO	
SWAN	JASON	DAVID
SWIATEK	EVA	LOUISE
SWINAMER	ALAN	D
SWISTON	DAVID	SCOTT
SWITZ	ELIN	THERESE
SZE	DIANE	CHONG
SZU	CLIFFORD	
SZUCHIEWICZ–KOSSAKOWSKA	ANNA	
TAEGER	DAVID	ALAN ELROY
TAGG	DEBRA	DEE
TAKAHASHI	MIKA	
TAKEDA	SHOUGO	WILLIAM
TAKEDA	MASAKKI	
TALBOT	CHRISTOPHER	DENNIS BLAQUIERE
TAM	ESTEFANIA	SEEN MANN
TAMIR	MENASHE	
TAN	JI	AN
TAN	YEE	YON
TAN	THUAN	
TANG	YVETTE	WING–YIN
TANG	WEIAN	
TANG	WANLI	
TANG	PEIYAN	
TANIGAWA	AKIHIKO	
TATEISHI	DONALD	NORI
TAUBIN	ABIGAIL	ANN
TAVANO	RACHELE	
TAYLER	SAMUEL	JOHN
TAYLOR	DAVID	CAMERON
TAYLOR	MICHAEL	CHARLES
TEEBKEN	SILJIA	
TEEVIN	NATHALIE	
TEGNER	ELISABETH	MONICA
TELL	MARY	JACQUELYNNE
TELL	ALEXANDER	JOSEPH EDMUND
TELL	IAN	PATRICK
TENCER	CATHERINE	
TERSIGNI	LOURDES	
TERSIGNI	GABRIELLA	TINA
TERSIGNI	CIARA	LORETO
TERSIGNI	DAVID	JOHN
THAWADI	HANAN	OSAMA
THEALL	LAURA	ANN
THEUERKAUF	NICHOLAS	ALEXANDER
THIEL	DIANA	ELAINE
THOMAS	MICHAL	
THOMMEN TSCHANNEN	BARBARA	
THOMPSON	MELANIE	KATE
THOMPSON	SCOTT	ANTHONY
THOMPSON	ANDREW	ARNOLD
THOMPSON	SEAN	
THURLOW–MEYER	BEACH	
THURMAN	PAUL	ALBERT
TILT	BEATRICE	ALEXANDRA ELIZABETH
TIMMS	JOHN	ALAN
TIMMS	NICHOLAS	ANDREW
TING	KHANG	
TISSING–TAN	CAROLINA	JOANNA ALEXANDRA
TJANDRA	MARCELLINA	
TOBISAKA	IKUKO	
TOBISAKA	YUZO	
TOMPKINS	KARL	HENRY
TOOLEN	CHRISTY	FINLAY
TOPPERWIEN	NATHANIAL	JAMES
TOUGHILL	SARAH	JEAN
TOURANGEAU	LUC	ROBERT
TOUSSAINT	DAMIEN	ROBERT WILLIAM
TRABANT	AMANDA	MERIE
TRACHSLER	KATHARINA	
TRACHT	DAVID	JACOB
TRIMBER	MARY	ANNE
TROLLIET	ERIKA	MICHELE
TRUAN	CAROLYNE	SARAH

Last name	First name	Middle name/initials
TRUSSELL	MICHAEL	RYAN
TSAI	CHENGI	
TSE	JONATHAN	AARON
TSENG	SHUPING	PING
TSENG	PAULA	
TURNBULL	KARIN	CHISHOLM
TURNBULL	DAVID	FRASER
TURNER	DAVID	HOWARD
TURNER	KARIN	ELIZABETH
UCHIDA	YUKO	
UEMATSU	JUN	FRANCIS
ULLMAN	LAUREN	A
UMSTAETTER	JOHANNES	DIETER
UNGER	BRIAN	JAMES
UPDIKE	SUZANNE	TODD
URSEL	ERICK	FREDERICK
URSEL	JAMIE	ANN
UTHAICHALANOND	PAUL	
UTTER	MEGAN	KATHERINE
UTZIG	GREGORY	FRANK
VACCARO	ANTONELLO	
VAELILAE ROSS	LAURA	H
VAN BUSSEL	ROBERT	GORDON
VAN DEN BEEMD	RODNEY	JOHN
VAN DEN BERG	RODERICK	NORBERT
VAN DER SILK	BART	JOSEPH ANTONIUS
VAN DER STICHELE	SARA	JANE
VAN DYKE	CHLOE	CAROLYN MASSEY
VAN GELDEREN	MAURICE	BERTRAND
VAN GELDEREN	JEANNETTE	KAREN
VAN HEES	JOHN	NICHOLAS
VAN INGELGEM	JACQUELINE	J
VAN POEDEROOYEN	MAXWELL	
VAN PRAAG	JACQUES	MAX
VAN VLIET	RAYLENE	ORA
VAN ZYVERDEN	ELISABETH	
VEITCH	TARA	MACNEIL
VERBREE	ADRIAN	HENRY
VERGOUWEN	KRISTIN	KUINN
VETERE	JANET	MARLENE LO
VICTOR	KENNETH	IRA
VIERTEL	KARL	WARREN
VILLAMIL	LAURA	
VILSON	MARITA	
VILSON	MIKAEL	
VINCENT	JAN	MARIE
VISRAM	NAZIR	
VOGEL	AMANDA	JANE
VOGT	CEDRIC	MAXIMILIAN
VOLOSHIN–STIX	SUSAN	PAULETTE
VON HANNOVER	CAROLINE	LUISE
VONG	HENRY	SAI MING
WACHTMAN	EMILY	KATHLEEN
WADDINGTON	JOSH	O
WADEHRA	AMITYUVINDER	KAUR
WALES	CHRISTOPHER	RICHARD
WALKER	MARIE	CATHERINE
WALLACE	FRANCESCA	THEKLA
WALLBRIDGE	JANE	ELIZABETH
WALSER NIETHAMMER	BIGNA	MICHELE
WALTON	KELLY	JO
WANG	ZHOU	
WANG	CHIJYUN	JILL
WANNER	JUTTA	
WARD	JILL	CHRISTINE
WARNER	ALAN	HENRY
WASSILL	VERONICA	J
WATSON	LOIS	ANN
WATSON	ALISTAIR	CRAIG
WATSON	ALARIC	
WEBB	SARA	ANNE
WEBER	ERIC	STEPHEN
WEBSTER	NEIL	JOHN
WEHNIAINEN	CARL	DAVID

Last name	First name	Middle name/initials
WEIBEL	LUCA	W
WEISHAEUPL	GABRIELE	CHRISTINE
WENZEL	GISELA	D
WERTHEYM	DENISE	YVETTE
WESSMAN	SEAN	E
WEXLER	ELLEN	BETH
WHIPPS	CHARLES	MICHAEL
WHITEHEAD	KRISTIN	MARIE
WHITLEY	REBECCA	RACHEL
WHITLEY	MORIA	MARGARET
WICHTOWSKI	STEFAN	CHARLES
WICKBERG	ERIC	JOSEPH
WIDMER	CARMEN	MARIA
WILDER	CORI	BETH
WILI	SIGRID	ELAINE
WILKINSON	PETER	RICHARD
WILLIAMS	JOHN	HENRY
WILLIAMS	HELEN	
WILSDON	RUTH	NEATHERY
WILSON	RITA	LOUISE
WILSON–YOUNG	MAXINE	DIANE
WINSOR	SARAH	JANE
WITT	DEBRA	J
WONG	ADRIAN	MAN HAY
WONG	ANDREA	CALPURNIA
WOOD	THOMAS	JAMES
WOODLEY	JAMES	
WOODSTOCK	STEPHANIE	ANN
WOOF	ELIZABETH	ANN
WORTHMANN	PATRIK	
WRIGHT	SAMUEL	DAVIDSON
WU	AGNES	YI–AN
WU	LOUIS	YIH–SHU
WULFF	RANDALL	PAUL
WURZ	ANAIS	MAGNOLIA
WYDER	URS	
YAMAKAWA	DAISUKE	
YAMAMOTO	YASUHIRO	
YANCEY	JUNKO	OGAWA
YANG	XUEQING	
YANG	QING	
YANG	NAN	
YANG	ROBERT	
YAO	MICHAEL	YUEN JEN
YASHIRO	MAYUMI	
YAU	ALFRED	L
YAZDI	BAHRAM	MODARRES
YEOH	KAREN	WEE LEEN
YEP	NICHOLAS	GA–SING
YIN	TIFFANY	GRACE
YOCUM	YUMIKO	H
YOLEN	STEVEN	HYATT
YONG	STEVEN	YEW CHOH
YOUK	JUNG	SIM
YOULE	JILLIAN	
YOULE	ROBERT	J
YOUNG	GRAHAM	ARTHUR
YOUNG	ERIC	HARRISON
YU	PEI	LEI
YU	JIANYING	
ZACH	MAXIMILIAN	PHILIPP
ZACHARIAS	MARC	
ZAIMOKUYA	KINUKO	
ZEE	JONATHAN	DAR PENG
ZEHAVI	LIMOR	HADAS
ZEIDLER	ROBIN	ALISON
ZEISBERGER	SAMUEL	KARL
ZHANG	RUI	
ZHANG	MARGARET	GUYIN
ZHANG	ZHENHUA	
ZHANG	TAO	
ZHANG	LU	
ZHANG	ANLIN	
ZHAO	CHUNMEI	

Last name	First name	Middle name/initials
ZIMMERMANN	NORBERT	BODO
ZIMMERMANN	MAXIMILIAN	ANTON
ZOCCO	STEPHANIE	RADA
ZOETEWEY	DANIEL	WILLIAM
ZUBER	TINA	CHANTAL
ZUBER	HELENA	
ZUERCHER	ANNA	BARBARA
ZUND	MARC	PHILIPPE
ZUPP	WALKER	SPURLING

Dated: July 29, 2024.

Steven B. Levine,

Manager Team 1940, CSDC—Compliance Support, Development & Communications, LB&I:WEIIC:IIC:T4.

[FR Doc. 2024–16993 Filed 7–31–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Meeting of the Treasury Advisory Committee on Racial Equity

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury is hosting its 2nd Meeting of Fiscal Year (FY) of 2024 of the Treasury Advisory Committee on Racial Equity (''TACRE'' or ''Committee''). The Committee is composed of 24 members who will provide information, advice, and recommendations to the Department of the Treasury on matters relating to the advancement of racial equity. This notification provides the date, time, and location of the second meeting of this fiscal year and the process for participating and providing comments.

DATES: September 9, 2024, at 1:00–5:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Snider Page, Designated Federal Official, Department of the Treasury, by emailing *TACRE@Treasury.gov* or by calling (202) 622–0341 (this is not a toll-free number). For individuals who may be deaf, hard of hearing, have a speech disability or difficulty speaking, you may dial 7–1–1 to access telecommunications relay services.

Check: https://home.treasury.gov/about/offices/equity-hub/TACRE for any updates to the September 9th meeting.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001 *et seq.*), the Department has established the Treasury Advisory Committee on Racial Equity. The Department has determined that establishing this Committee was necessary and in the public interest to carry out the provisions of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government.*

Background

Objectives and Duties

The purpose of the Committee is to provide advice and recommendations to Secretary of the Treasury Janet L. Yellen and Deputy Secretary Wally Adeyemo on efforts to advance racial equity in the economy and address acute disparities for communities of color. The Committee will identify, monitor, and review aspects of the domestic economy that have directly and indirectly resulted in unfavorable conditions for communities of color. The Committee plans to address topics including but not limited to: financial inclusion, access to capital, housing stability, federal supplier diversity, and economic development. The duties of the Committee shall be solely advisory and shall extend only to the submission of advice and recommendations to the Offices of the Secretary and Deputy Secretary, which shall be non-binding to the Department. No determination of fact or policy shall be made by the Committee.

The agenda for the meeting includes opening remarks from the TACRE Chair and Vice-Chair; an overview of the work conducted by the TACRE subcommittees since the April 18, 2024, TACRE meeting, and a possible vote on recommendations to make to the Department; briefings from government officials from Treasury and the Internal Revenue Service; and a review, and possible discussion, of any comments received from the public. Meeting times and topics are subject to change.

Second Periodic Meeting: In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Snider Page, the Designated Federal Officer of TACRE, has ordered publication of this notice to inform the public that the TACRE will convene its 2nd Meeting of FY 2024 on Monday, September 9, 2024, from 1:00 p.m.–5:00 p.m. Eastern Time, at the Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

Process for Submitting Public Comments: Members of the public wishing to comment on the business of the TACRE are invited to submit written comments by emailing *TACRE@Treasury.gov.* Comments are requested no later than 15 calendar days before the public meeting to be considered by the Committee.

In general, the Department will post all comments received on its website *https://home.treasury.gov/about/offices/equity-hub/TACRE* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department will also make these comments available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Process for Attending In-Person: Treasury is a secure facility, that requires all visitors to get cleared by security prior to arrival at the building. Please register for the Public Meeting by August 31, 2024, by visiting: *https://events.treasury.gov/s/event-template/a2mSJ0000000MjhYAE.* The registration process will require submission of personally identifiable information, such as, full name, email address, date of birth, social security number, citizenship, residence, and if you have recently traveled outside of the United States.

Due to the limited size of the meeting room, public attendance will be limited to the first 20 people that complete the registration process. Members of the public will need to bring a government issued identification that matches the

information provided during the registration process and present that to Security, for entry into the building. Please plan on arriving 30–45 minutes prior to the meeting to allow time for security. If you require reasonable accommodation, please contact the Departmental Offices Reasonable Accommodations Coordinator at *ReasonableAccommodationRequests@treasury.gov.* If requesting a sign language interpreter, please make sure your request to the Reasonable Accommodations Coordinator is made at least five (5) days prior to the event if possible.

Dated: July 28, 2024.

Snider Page,

Director, Office of Civil Rights and EEO and Designated Federal Officer.

CLEARANCE SHEET: **Federal Register** NOTICE

Memo Subject:	Treasury Advisory Committee on Racial Equity (TACRE) **Federal Register** Notice of September 9, 2024 Meeting		
Drafted by:	ODEIA	Snider Page	202–622–0341
Approved by:	Counselor	Janis Bowdler.	
Cleared by:	Exec Sec	*Deputy Exec Sec to insert.*	
	Deputy GCFO	Eric Nguyen.	
	ODEIA	Rhianna Rogers.	
	Equity Hub	Diane Lim.	
	GCFO	Brian Sonfield.	
	GLER	Christian Furey.	
	PTR	Robert Faber.	
	PTR	Spencer Clark.	
	GLER	Heidi Cohen.	
	OPA	Ruby Robles Perez.	

[FR Doc. 2024–16965 Filed 7–31–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Massage Therapist Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for information.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in developing a national standard of practice for VA Massage Therapists. VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before September 30, 2024.

ADDRESSES: Comments must be submitted through *http://www.regulations.gov/.* Except as provided below, comments received before the close of the comment period will be available at *http://www.regulations.gov/* for public viewing, inspection, copying, or including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov/.* VA will not post on *http://www.regulations.gov/* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date will not be considered.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Office of Governance, Regulations, Appeals, and Policy (10B–GRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any state license, registration, certification, or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of permitting VA health care professionals to deliver health care services in a state other than the health care professional's state of licensure, registration, certification, or other requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals, which would standardize a health care professional's practice in all VA medical facilities, regardless of conflicting state laws, rules, regulations, or other requirements.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may perform the same type of tasks and duties regardless of the state where they are located or the state license, registration, certification, or other requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the proper education, training, and skills to perform the tasks and duties detailed in the national standard of practice, and that they will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Preemption of State Requirements

The national standard of practice will preempt any state laws, rules, regulations, or other requirements that both are and are not listed in the national standard as conflicting, but that do conflict with the tasks and duties as authorized in VA's national standard of practice. In the event that a state changes their requirements and places new limitations on the tasks and duties it permits in a manner that would be inconsistent with what is authorized under the national standard of practice, the national standard of practice will preempt such limitations and authorize the VA health care professional to continue to practice consistent with the tasks and duties outlined in the national standard of practice.

In cases where a VA health care professional's license, registration, certification, or other requirement permits a practice that is not included in a national standard of practice, the individual may continue that practice so long as it is permissible under Federal law and VA policy, is not explicitly restricted by the national standard of practice and is approved by the VA medical facility.

Need for National Standards of Practice

It is critical that VA, the Nation's largest integrated health care system, develops national standards of practice to ensure, first, that beneficiaries receive the same high-quality care regardless of where they enter the system and, second, that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the coronavirus disease 2019 (COVID–19) pandemic. The increased need for mobility in VA's workforce, including through VA's Disaster Emergency Medical Personnel System, highlighted the importance of creating uniform national standards of practice to better support VA health care professionals who practice across state lines. Creating national standards of practice also promotes interoperability of medical data between VA and the Department of Defense (DoD), providing a complete picture of a veteran's health information and improving VA's delivery of health care to the Nation's veterans. DoD has historically standardized practice for certain health care professionals, and VA has closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

As authorized by 38 CFR 17.419, VA is developing national standards of practice via policy. There is one overarching directive to describe Veterans Health Administration (VHA) policy on national standards of practice, VHA Directive 1900(5), VA National Standards of Practice, August 30, 2023. The directive is accessible on VHA's publications website at *https://www.va.gov/vhapublications/.* As each individual national standard of practice is finalized, it is published as an appendix to the directive and accessible at the same website.

To develop these national standards, VA is using a robust, interactive process that adheres to the requirements of Executive Order (E.O.) 13132 to preempt conflicting state laws, rules, regulations, or other requirements. For each health care occupation, a workgroup comprised of VA health care professionals in the identified occupation conducts research to identify internal best practices that may not be authorized under every state license, certification, or registration, but would enhance the practice and efficiency of the profession throughout VA. If a best practice is identified that is not currently authorized by every state, the workgroup determines what education, training, and skills are required to perform such tasks and duties. The workgroup then drafts a proposed VA national standard of practice using the data gathered and any internal stakeholder feedback received. The workgroup may consult with internal or external stakeholders at any point throughout the process.

The process to develop VA national standards of practice includes listening sessions for members of the public, professional associations, and VA employees to provide comments on the variance between state practice acts for specific occupations and what should be included in the national standard of practice for that occupation. The listening session for Massage Therapists was held on August 31, 2023. No professional associations presented comments on the Massage Therapist standard of practice.

After the proposed standard is developed, it is first internally reviewed. This includes a review from an interdisciplinary VA workgroup consisting of representatives from Quality Management, VA medical facility Chief of Staff, Academic Affiliates, Veterans Integrated Services Network (VISN) Chief Nursing Officer, Ethics, Workforce Management and Consulting, Surgery, Credentialing and Privileging, VISN Chief Medical Officer, and Electronic Health Record Modernization.

After the internal review, VA provides the proposed national standard of practice to our DoD partners as an opportunity to flag inconsistencies with DoD standards. VA also engages with labor partners informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, VA sends a letter to each state board and certifying organization or registration organization, as appropriate, which includes the proposed national standard and offers the recipient an opportunity to discuss the national standard with VA. After the state boards, certifying organizations, or registration organizations have received notification, the proposed national standard of practice is posted in the **Federal Register** for 60 days to obtain feedback from the public, professional associations, and any other interested parties. At the same time, the proposed national standard is posted to an internal VA site to obtain feedback from VA employees. Responses received through all vehicles—from state boards, professional associations, unions, VA employees, and any other individual or organization who provides comments via the **Federal Register**—will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals. VA will publish a collective response to all comments at *https://www.va.gov/standardsofpractice/.*

The national standard of practice is then finalized, approved, and published in VHA policy. Any tasks or duties included in the national standard will be properly incorporated into individual VA health care professionals' privileges, scope of practice, or functional statement once it has been determined by their VA medical facility that the individual has the proper education, training, and skills to perform the task or duty. Implementation of the national standard of practice may be phased in across all VA medical facilities, with limited exemptions for health care professionals as needed.

Format for the Proposed National Standard for Massage Therapist

The format for the proposed national standards of practice when there are state licenses, registrations, or certifications is as follows. The first paragraph provides general information

about the profession and what the VA health care professionals can do. For this national standard, Massage Therapists skillfully assess and manipulate the soft tissues of the human body for therapeutic purposes. Massage Therapists assess patients, develop evidence-based, individualized massage therapy treatment plans, and participate as members of interdisciplinary health care teams. We reiterate that the proposed standard of practice does not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight generally what tasks and duties the health care professionals perform and how they practice within VA.

The second paragraph references the education and license, registration, or certification needed to practice this profession at VA. Qualification standards for employment of health care professionals by VA are outlined in VA Handbook 5005, Staffing, dated July 8, 2024. VA follows the requirements outlined in its qualification standards even if the requirements conflict with or differ from a state requirement. National standards of practice do not affect those requirements. For Massage Therapists, VA qualification standards require an active, current, full, and unrestricted state license, registration, or certification.

The second paragraph also notes whether the national standard of practice explicitly excludes individuals who practice under ''grandfathering'' provisions. Qualification standards may include provisions to permit employees who met all requirements prior to revisions to the qualification standards to maintain employment at VA even if they no longer meet the new qualification standards. This practice is referred to as grandfathering. Massage Therapists have grandfathering provisions included within their qualification standards, and VA proposes to have those individuals authorized to follow the Massage Therapist national standard of practice. Therefore, there would be no notation regarding grandfathered employees in the national standard of practice as they would be required to adhere to the national standard as any other VA Massage Therapist who meets the current qualification standards.

The third paragraph establishes what the national standard of practice will be for the occupation in VA. It includes whether the profession can practice all duties covered by their license, certification, or registration. For Massage Therapists, they can perform all tasks and duties authorized under their applicable license, registration, or certification. VA reviewed the state laws and practice acts for Massage Therapists on November 2023 and did not identify any conflicts that impact practice of this profession in VA.

This national standard of practice does not address training because it will not authorize VA Massage Therapists to perform any tasks or duties not already authorized under their state license, registration, or certification.

Following public and VA employee comments and revisions, each national standard of practice that is published in policy will also include the date for recertification of the standard of practice and a point of contact for questions or concerns.

Proposed National Standard of Practice for Massage Therapist

Note: *All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.*

1. Massage Therapists skillfully assess and manipulate the soft tissues of the human body for therapeutic purposes. Massage Therapists assess patients, develop evidence-based, individualized massage therapy treatment plans, and participate as members of interdisciplinary health care teams. They use their hands, arms, knees, and feet to perform soft tissue manipulation. Massage Therapists incorporate active and passive range of motion exercise. They also utilize devices and tools to mimic or enhance manual therapy; incorporate adjunctive modalities; educate patients in health promotion, disease prevention and holistic self-care methods; and facilitate mind-body awareness to achieve healing.

2. Massage Therapists in the Department of Veterans Affairs (VA) possess the education and license, registration, or certification required by VA qualification standards. See VA Handbook 5005, Staffing, Part II, Appendix G56, dated March 12, 2019.

3. VA Massage Therapists can practice all duties covered by their license, local registration, or local certification; or practice in accordance with the National Certification Board for Therapeutic Massage and Bodywork certification, available at: *https://ncbtmb.org/.* VA reviewed the state laws and practice acts for Massage Therapists on November 2023 and did not identify any conflicts that impact practice of this profession in VA.

Request for Information

1. Is VA's assessment of what states permit and restrict accurate?

2. Are there any areas of variance between state licenses, certification, registration, or other requirement that VA should preempt that are not listed?

3. Is there anything else you would like to share with us about this VA national standard of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on July 17, 2024 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.

Michael P. Shores,

Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–16944 Filed 7–31–24; 8:45 am]

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FEDERAL REGISTER

Vol. 89 Thursday,
No. 148 August 1, 2024

Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review: Correction; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2021–0317; FRL–11890–01–OAR]

RIN 2060–AW18

Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review: Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule; correction; request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking interim final action on technical corrections to three regulations recently finalized within ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,'' (hereafter ''final rule''), published March 8, 2024. Following publication of the 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 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/or to ensure that the regulatory text aligns with the descriptions of the relevant provisions in the final rule preamble and other parts of the regulation(s). The corrections being made in this action are minor and non-substantive in nature and are being made to address inadvertent errors in the final rule. The EPA is requesting comments on all aspects of this interim final rule.

DATES: This rule is effective on August 1, 2024. Comments on this interim final rule must be received on or before September 3, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0317, 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–2021–0317 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2021–0317.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPAHQ–OAR–2021–0317, 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.–4:30 p.m., Monday–Friday (except Federal Holidays). Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Public Participation'' heading of the General Information section of this document.

FOR FURTHER INFORMATION CONTACT: Frank Benjamin-Eze, Sector Policies and Programs Division (E143–05), 109 T.W. Alexander Drive, P.O. Box 12055, Office of Air Quality Planning and Standards, United States Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3753; and email address: *benjamineze.frank@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

APA Administrative Procedure Act
AVO audible, visual, and olfactory
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
CRA Congressional Review Act
EG emissions guidelines
EPA Environmental Protection Agency
FR Federal Register
GHG greenhouse gas
ID Identification
NAICS North American Industry Classification System
NDE No detectable emissions
NHV net heating value
NSPS new source performance standards
OGI optical gas imaging
OMB Office of Management and Budget
P.O. Post Office
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SO2 sulfur dioxide
tpy tons per year
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code
VOC volatile organic compound(s)

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Public Participation

Submit your written comments, identified by Docket ID No. EPA–HQ–OAR–2021–0317, at *https://www.regulations.gov* (our preferred method), or by 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 to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document. 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 or multimedia submissions; and general guidance on making effective comments.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov.* Clearly mark the part or all the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in the Public Participation section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@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 email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055 RTP, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2021–0317. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

B. Potentially Affected Entities

The source category that is the subject of this action is the Crude Oil and Natural Gas source category, regulated under Clean Air Act (CAA) section 111. The North American Industry Classification System (NAICS) codes for the industrial source categories affected by the NSPS and EG actions taken in the final rule are summarized in table 1.

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THE NSPS AND EG ACTIONS

Category	NAICS code [1]	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.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the technical corrections and clarifications. Other types of entities not listed in the table could also be affected by this action. To determine whether your entity is affected by any of the corrections to the final rule in this action, you should carefully examine the applicability criteria found in NSPS OOOOa, NSPS OOOOb and EG OOOOc. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Statutory Authority

Statutory authority to issue the amendments finalized in this action is provided by the same CAA provisions that provided authority to issue the regulations being amended: CAA section 111(b)(1)(B) (requirement to review, and if appropriate, revise, standards of performance for new sources at least every 8 years) and CAA section 111(d) (requirement to establish standards of performance for existing sources for certain pollutants to which a Federal NSPS would apply if such existing source were a new source). Statutory authority for the rulemaking procedures followed in this action is provided by Administrative Procedure Act (APA) section 553(b)(B), 5 U.S.C. 553(b)(B) (good cause exception to notice and comment rulemaking).

D. Judicial Review and Administrative Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by September 30, 2024. Under CAA section 307(b)(2), the requirements established by this final action may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

II. Regulatory Revisions

A. Background and Summary

On November 15, 2021, the EPA published a proposed rule (November 2021 Proposal) to mitigate climate-destabilizing pollution and protect human health by reducing greenhouse gas (GHG) and volatile organic compound (VOC) emissions from the oil and natural gas industry,[1] specifically

[1] The EPA characterizes the oil and natural gas industry operations as being generally composed of 4 segments: (1) Extraction and production of crude oil and natural gas (''oil and natural gas

Continued

the Crude Oil and Natural Gas source category.[2] [3] In the November 2021 Proposal, the EPA proposed new standards of performance under section 111(b) of the CAA for GHGs (in the form of methane limitations) and VOC emissions from new, modified, and reconstructed sources in this source category, as well as revisions to standards of performance already codified at 40 CFR part 60, subparts OOOO and OOOOa. The EPA also proposed EG under section 111(d) of the CAA for GHGs emissions (in the form of methane limitations) from existing sources (designated facilities).[4] The EPA also proposed several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the Congressional Review Act (CRA), disapproving the EPA's final rule titled, ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,'' September 14, 2020 (2020 Policy Rule). Lastly, in the November 2021 Proposal the EPA proposed a protocol under the general provisions for optical gas imaging (OGI).

On December 6, 2022, the EPA published a supplemental proposed rule (''December 2022 Supplemental Proposal'') that was composed of 2 main additions.[5] First, the EPA updated, strengthened, and expanded on the NSPS OOOOb standards proposed in November 2021 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 updated, strengthened, and expanded the presumptive standards proposed for EG OOOOc in the November 2021 Proposal as part of the CAA section 111(d) EG for GHGs emissions (in the form of methane limitations) from designated facilities. For purposes of EG OOOOc, the EPA also proposed the implementation requirements for state plans developed to limit GHGs 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, at 89 FR 16820, the EPA published the final rule with multiple actions to reduce air emissions from the Crude Oil and Natural Gas source category. First, the EPA finalized an NSPS OOOOb regulating GHG (in the form of a limitation on emissions of methane) and VOCs emissions for the Crude Oil and Natural Gas source category pursuant to CAA section 111(b)(1)(B). Second, the EPA finalized the presumptive standards in EG OOOOc to limit GHGs. Third, the EPA finalized several related actions (including final amendments to NSPS OOOOa) stemming from the joint resolution of Congress, adopted on June 30, 2021, under the CRA, disapproving the 2020 Policy Rule. The final rule became effective sixty days after publication, which was May 7, 2024.

As discussed in the summary of this preamble, after the publication of the final rule, the EPA discovered, through its own internal reassessment of the regulatory text, as well as through communications with stakeholders and the Office of Federal Register, erroneous cross-references and typographical errors within the regulatory text. Through those same processes, the EPA also identified erroneous language in the regulatory text (or in some cases, erroneous omissions) requiring minor wording changes in order to conform with the final rule preamble and other parts of the regulatory text. The technical corrections and clarifications identified herein are being made to address such unintended errors in the recently finalized regulations. The final rule is extensive, covering many individual emissions sources at thousands of facilities in the oil and natural gas industry across the country. The EPA acknowledges the importance of finalizing these corrections to the regulatory text as soon as possible so that the regulated community can rely on regulatory text that is accurate and complete and avoid confusion about how to comply with the final rule. This action addresses the technical errors in the final rule identified to date by stakeholders, the Office of the Federal Register, and the EPA. This action does not attempt to address all issues identified by stakeholders following the rules' promulgation. The EPA continues to review other issues that have been brought to the Agency's attention but are not addressed in this action. To the extent the EPA determines that additional action is appropriate to address other post-promulgation issues, we will initiate a separate rulemaking action. As explained in further detail in sections II.B–D, and in section IV, the EPA is taking this action as an interim final rule without prior proposal and public comment because the EPA finds that this action satisfies the good cause exemption from the notice and comment rulemaking requirement of the APA, 5 U.S.C. 553(b)(B).

B. Technical Corrections for NSPS OOOOa

Following signature of the final rule, we identified typographical errors included in the amendments to NSPS OOOOa. This action corrects those typographical errors, which are summarized below. In 40 CFR 60.5430a, the EPA identified a typographical error in the definition of ''*Equipment.*'' The final rule inadvertently excluded the word ''and'' between ''equipment leaks of GHG (in the form of methane)'' and ''VOC.'' This omission is clear from a plain reading of the text. This technical error of omission is corrected in this action. In addition, the EPA identified typographical errors in mathematical symbols used in tables in both NSPS OOOOa and NSPS OOOOb. These mathematical symbol errors are corrected by this action in both NSPS OOOOa and NSPS OOOOb. In the amendments to NSPS OOOOa of the final rule, these errors were identified in Table 1 to Subpart OOOOa of Part 60—Required Minimum Initial sulfur dioxide (SO_2) Emission Reduction Efficiency (Z_i) and Table 2 to Subpart OOOOa of Part 60—Required Minimum SO_2 Emission Reduction Efficiency (Z_c). In NSPS OOOOb, these errors were identified in Table 3 to Subpart OOOOb of Part 60—Required Minimum Initial SO_2 Emission Reduction Efficiency (Z_i) and Table 4 to Subpart OOOOb of Part 60—Required Minimum SO_2 Emission Reduction Efficiency (Z_c). The inadvertent typographical errors therein are the mathematical symbols ''≤'' and ''≥'' which were mistakenly included in the final rule as ''<''and ''>''. These technical typographical errors are corrected in this action. Note that the corrections to the mathematical symbols in these tables parallel what is included in similar tables in NSPS OOOO, which are correct. The substance of the final rule remains unchanged by correcting these typographical errors. Thus, the EPA finds good cause to make these

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production''), (2) natural gas processing, (3) natural gas transmission and storage, and (4) natural gas distribution.

[2] ''*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.

[3] 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.''

[4] The term ''designated facility'' means ''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.'' See 40 CFR 60.21a(b).

[5] ''*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.

corrections to the final rule without prior notice or comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B). A red line and strike-out version of the corrected regulatory language for NSPS OOOOa amendment is available in Docket ID No. EPA–HQ–OAR–2021–0317.

C. Technical Corrections for NSPS OOOOb

1. Cross-Reference, Paragraph Designation, and Typographical Technical Corrections

Following signature of the final rule, stakeholders and the Office of the Federal Register brought to the Agency's attention, and the EPA itself identified, inadvertent errors in the regulatory text of NSPS OOOOb, including cross-reference, paragraph designation, and typographical errors. Table 2 (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 being made by this action, and the reasoning for the corrections. The substance of the final rule remains unchanged by correcting these errors, which are technical in nature, and the EPA therefore finds good cause to make these technical corrections to the regulatory text of NSPS OOOOb, without prior notice and comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B).

TABLE 2—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb

Section and paragraph	Technical correction and reason for change
60.5365b(e)(2)(i)(C)	Replace ''(e)(1)(i)(A)'' with ''paragraph (e)(2)(i)(A)'' to correct an inadvertent cross-reference error and paragraph referencing format.
60.5365b(g)(3)	a. Replace ''§ 60.5423b(c)'' with ''§ 60.5423b(e)'' to correct an inadvertent cross-reference error; and b. Replace ''60.5415b(i)'' with ''60.5415b(k)'' to correct an inadvertent cross-reference error.
60.5365b(g)(4)	Replace ''60.5415b(i)'' with ''60.5415b(k)'' to correct an inadvertent cross-reference error.
60.5365b(h)(2)	a. First sentence: Replace ''§ 60.5390b'' with ''§ 60.5393b'' to correct section reference; and b. Fourth sentence: Replace ''(h)(2)(ii)'' with ''paragraph (h)(2)(ii)'' to correct paragraph referencing format.
60.5365b(i)(3) introductory text	Replace ''For purposes of § 60.5397b'' with ''For purposes of §§ 60.5397b and 60.5398b'' to add cross-reference inadvertently omitted.
60.5365b(i)(3)(ii)	Second sentence: Replace ''for purposes of § 60.5397b'' with ''for purposes of §§ 60.5397b and 60.5398b'' to add cross-reference inadvertently omitted.
60.5370b(a)(1) introductory text	Replace ''§ 60.5385b(a)'' with ''§ 60.5385b'' to correct paragraph reference.
60.5370b(a)(1)(i)	Replace ''§ 60.5385b(a)(1) and (d)(3)'' with ''§ 60.5385b(a)(1)'' to remove cross-reference inadvertently included.
60.5370b(a)(4)	Replace ''§ 60.5400b'' with ''§ 60.5400b or as an alternative, the requirements in § 60.5401b,'' to include an inadvertent cross-reference addition and clarification.
60.5370b(a)(7)(i)	Replace ''for your reciprocating compressor'' with ''for your centrifugal compressor'' to correct an inadvertent typographical error.
60.5371b(d)(2) introductory text	Replace ''(d)(6)(i) through (v)'' with ''(d)(2)(i) through (v)'' to correct an inadvertent cross-reference error.
60.5371b(e)(1)(v)	Replace ''(d)(6)(i) through (v)'' with ''(d)(2)(i) through (v)'' to correct an inadvertent cross-reference error.
60.5376b(a)(1) introductory text	First sentence: Replace ''(a)(1)(A) and (B)'' with ''(a)(1)(i) and (ii) and (d) and (e) of this section'' to add cross-references inadvertently omitted and to correct paragraph referencing.
60.5376b(g)(4)	Replace ''§ 60.5415b(f)'' with ''§ 60.5415b(b)'' to correct an inadvertent cross-reference error.
60.5377b(g)(2)	Replace ''§ 60.5377b(b)(1)'' with ''§ 60.5377b(b)'' to correct paragraph referencing.
60.5380b(a)(5) introductory text	a. Replace ''Alaska North Slope equipped with seal oil separator'' with ''Alaska North Slope equipped with sour seal oil separator'' to include ''sour'' which was inadvertently not included. b. Add ''of this section'' after ''(a)(1) and (2)'' at the end of the first sentence to correct format inconsistency.
60.5385b(a)(3) introductory text	Replace ''paragraph (b)'' with ''paragraph (b) or (c)'' in the second sentence to correct cross-references to clarify that either paragraph can be used to conduct follow-up volumetric flow rate measurements.
60.5385b(g)	Replace ''§ 60.5420b(b)(1), (6), (11) and (12)'' with ''§ 60.5420b(b)(1), (6), and (11) through (13)'' to correct an inadvertent cross-reference error.
60.5386b(c) introductory text	Replace ''.'' with a '','' to correct an inadvertent punctuation error.
60.5393b(b)(6)(ii)	a. Replace ''§ 60.5420b(c)(15)(ii) and (v)'' with ''§ 60.5420b(c)(15)(ii) through (iv)'' to correct an inadvertent cross-reference error. b. Replace ''§ 60.5420b(c)(15)(vi).'' with ''§ 60.5420b(c)(15)(v) certifying that there is no vapor recovery unit or control device on site.'' to correct and clarify cross-reference.
60.5393b(b)(7)(iii)	Replace ''§ 60.5393b(b)(5)(ii)'' with ''§ 60.5393b(b)(7)(ii)'' to correct an inadvertent cross-reference error.
60.5395b(c)(1)(ii)	Replace ''§ 60.5420b(b)(6)(viii)'' with ''§ 60.5420b(b)(8)(vii)'' to correct an inadvertent cross-reference error.
60.5395b(c)(2)(iii)	Replace ''§ 60.5420b(b)(8)(viii)'' with ''§ 60.5420b(b)(8)(vii)'' to correct an inadvertent cross-reference error.
60.5395b(c)(4)	Replace ''§ 60.5420b(b)(8)(ix)'' with ''§ 60.5420b(b)(8)(viii)'' to correct an inadvertent cross-reference error.
60.5397b(d) introductory text	Replace ''(d)(1) through (3)'' with ''(d)(1) and (2)'' to correct an inadvertent cross-reference error.
60.5397b(k)	Replace ''§ 60.5420b(c)(16)'' with ''§ 60.5420b(c)(14)'' to correct an inadvertent cross-reference error.
60.5398b(d)(3)(iii)(A)	Delete ''g'' after ''underlying'' to remove an inadvertent typographical error.
60.5398b(d)(3)(vi) introductory text	Last sentence: Add ''must'' between ''you'' and ''provide'' to correct an inadvertent typographical error.
60.5400b(k)	Replace ''§ 60.5420b(b)(1) and (11)'' with ''§ 60.5420b(b)(1) and (11) through (13), as applicable,'' to correct inadvertent cross-reference omissions to include all cover, closed vent system and control device requirements.
60.5400b(l)	Replace ''§ 60.5420b(c)(8), (10) and (12)'' with ''§ 60.5420b(c)(8) and (10) through (13), as applicable,'' to correct inadvertent cross-reference omissions to include all cover, closed vent system and control device requirements.
60.5401b(b) introductory text	In the first and last sentence, replace ''(b)(2) through (4)'' with ''(b)(2) through (6)'' to correct two inadvertent cross-reference errors.
60.5401b(b)(2) introductory text	Replace ''(b)(2)(i) through (vi)'' with ''(b)(2)(i) through (v)'' to correct an inadvertent cross-reference error.

TABLE 2—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb—Continued

Section and paragraph	Technical correction and reason for change
60.5401b(b)(5) introductory text	Replace ''paragraphs (b), (b)(1) and (b)(2)(iv) through (vi)'' with ''paragraphs (b) introductory text, (b)(1), and (b)(2)(iv) and (v)'' to correct an inadvertent cross-reference error and formatting.
60.5401b(c)(5)	Replace ''paragraph (i)(4)'' with ''paragraph (i)(6)'' to correct an inadvertent cross-reference error.
60.5401b(f) introductory text	Replace ''(h)(3) through (5)'' with ''(f)(3) through (5)'' to correct an inadvertent cross-reference error.
60.5401b(f)(1)	Replace ''(h)(3) through (5)'' with ''(f)(3) through (5)'' to correct an inadvertent cross-reference error.
60.5401b(f)(3) introductory text	Replace ''the requirements in paragraphs (f) of this section'' with ''the monitoring requirements of paragraph (f) of this section'' to include consistent cross-reference specificity.
60.5401b(f)(4) introductory text	a. Replace ''pump'' with ''valve'' to correct an inadvertent error; and b. Replace ''the monitoring requirements in paragraph (f) introductory text of this section'' with ''the monitoring requirements of paragraph (f) of this section'' to include consistent cross-reference specificity.
60.5401b(f)(5) introductory text	Replace ''the monitoring requirements in paragraph (h)'' with ''the monitoring requirements in paragraph (f)'' to correct an inadvertent cross-reference error and to include consistent cross-reference specificity.
60.5401b(i)(2)(ii)	Replace ''with (h)(2)(ii)(A), (B) or (C), and (D)'' with ''with paragraph (i)(2)(ii)(A), (B), or (C), of this section, unless you meet the requirements of paragraph (i)(2)(ii)(D) of this section'' to correct an inadvertent cross-reference error and to include that, if complying with paragraph (i)(2)(ii)(D), an owner or operator is not required to comply with the requirements in paragraphs (i)(2)(ii)(A), (B), or (C).
60.5401b(l)	Replace ''§§ 60.5420b(b)(1), (b)(11), and 60.5422b'' with ''§ 60.5420b(b)(1) and (11) through (13), as applicable, and § 60.5422b'' to correct inadvertent cross-referencing errors to include all cover, closed vent system and control device requirements.
60.5401b(m)	Replace ''§ 60.5420b(c)(8), (10), (12), and'' with ''§ 60.5420b(c)(8) and (10) through (13), as applicable, and'' to correct recordkeeping referencing to include all cover, closed vent system and control device requirements, as applicable.
60.5402b(d) introductory text	Replace ''§ 60.5403b(e)'' with ''§ 60.5403b(d)'' to correct cross-reference error.
60.5403b(c) introductory text	Replace ''§ 60.5401b(b), (c), and (f)'' with ''§ 60.5401b(b) and (f)'' to remove cross-reference to paragraph ''(c)'' to correct an inadvertent cross-reference error. No detectable emissions (NDE) for pressure relief devices (PRDs) was removed in NSPS OOOOb.
60.5406b(c)(4)(iv) (second paragraph reference).	Redesignate second ''§ 60.5406b(c)(4)(iv)'' paragraph reference as ''§ 60.5406b(c)(4)(vi)'' to correct paragraph designation.
60.5407b(b)(4)	Replace ''in paragraph (d)'' with ''in paragraph (c)'' to correct an inadvertent cross-reference error.
60.5410b(b)(4) introductory text	Replace ''paragraphs (b)(4)(i) through (vii)'' with ''paragraphs (b)(4)(i) through (vi)'' to correct an inadvertent cross-reference error.
60.5410b(c) introductory text	Replace ''paragraphs (c)(1) through (3)'' with ''paragraphs (c)(1) through (4)'' to correct an inadvertent cross-reference error.
60.5410b(e)(3)	Replace ''equipe'' with ''equip'' to correct an inadvertent typographical error.
60.5410b(f) introductory text	Second sentence: Replace ''must perform'' with ''must also perform'' to correct an inadvertent omission.
60.5410b(f)(2) introductory text	Replace ''(f)(2)(i) through (v)'' with ''(f)(2)(i) through (iv)'' to correct an inadvertent cross-reference error.
60.5410b(g) introductory text	Second sentence: Replace ''must perform'' with ''must also perform'' to correct an inadvertent omission.
60.5410b(g)(1) introductory text	First sentence: Replace ''(g)(ii) and (iv)'' with ''(g)(1)(ii) and (iv)'' to correct an inadvertent cross-reference error.
60.5410b(g)(2)(i)	Replace ''§ 60.5393b(b)(3)'' with ''§ 60.5393b(b)(5)'' to correct an inadvertent cross-reference error.
60.5410b(g)(2)(ii)	Replace ''§ 60.5393b(b)(4)'' with ''§ 60.5393b(b)(6)'' to correct an inadvertent cross-reference error.
60.5410b(g)(2)(iii)	Replace ''§ 60.5393b(b)(5)(i)'' with ''§ 60.5393b(b)(7)'' to correct an inadvertent cross-reference error.
60.5410b(h)(12)	Replace ''§ 60.5400b(h) or § 60.5400b(i)'' with ''§ 60.5400b(h) or § 60.5401b(i)'' to correct an inadvertent cross-reference error.
60.5411b(b)(4)	Replace ''paragraphs (b)(2)(i) through (iii)'' with ''paragraphs (b)(2)(i) through (iv)'' to correct an inadvertent cross-reference error.
60.5412b(a) introductory text	First sentence: a. Replace ''§ 60.5377b(f)'' with ''§ 60.5377b(d) or (f)''; b. Replace ''§ 60.5380b(a)(1)'' with ''§ 60.5380b(a)(1) or (9)''; and c. Replace ''§ 60.5393b(b)(1)'' with ''§ 60.5393b(b)(3)''. These replacements would correct inadvertent cross-reference errors and omissions.
60.5412b(c)(1)(i)	Second sentence: Replace ''§ 60.5420b(c)(10) and (12)'' with ''§ 60.5420b(c)(11)'' to correct an inadvertent cross-reference error.
60.5412b(d)(4)	Second sentence: Replace ''§ 5417b(d)(8)(v)'' with ''§ 60.5417b(d)(8)(v)'' to correct an inadvertent cross-reference error.
60.5413b introductory text	a. First sentence: Replace ''pump affected facilities complying with § 60.5393b(b)(1), or process unit equipment affected facility'' with ''pump, or process unit equipment affected facilities'' to correct language to be consistent with how other emission sources are listed/cited and for added clarity; and b. Last sentence: Replace ''pump affected facilities complying with § 60.5393b(b)(1)'' with ''pump'' to correct language to be consistent with how other emission sources are listed/cited.
60.5415b(e)(3)	Replace ''§ 60.5420b(c)(8), (10), (12), and (15)'' with ''§ 60.5420b(c)(8), (10) through (12), and (15)'' to correct an inadvertent cross-reference error.
60.5415b(f) introductory text	First sentence after title: Replace ''paragraph (b), (c), (d)(1), (e)(1), (g), (h)(2)(iv), (i) or (j) of this section'' with ''paragraph (b), (c), (d)(1), (e)(1), (g)(2), (h)(2), (i)(5)(ii)(B) or (j)(12) of this section'' to correct inadvertent cross-reference errors.
60.5415b(f)(1)(vii)(A)(*4*)	Replace ''paragraph (f)(1)(vii)(D) of this section'' with ''paragraph (f)(1)(vii)(A)(*2*) of this section'' to correct an inadvertent cross-reference error.
60.5415b(h)(3)	Replace ''§ 60.5420b(b)(1), (7), and (11)(i) through (iv),'' with ''§ 60.5420b(b)(1), (7), and (11) through (13),'' to correct an inadvertent cross-reference error.
60.5415b(i)(3)	Replace ''requirements of § 60.5395b(c)(1) by'' with ''requirements of § 60.5395b(c)(1) or (2) by'' to correct an inadvertent cross-reference omission.
60.5415b(i)(4)	Replace ''§ 60.5395b(c)(1)'' with ''§ 60.5395b(c)(3) and (4)'' to correct an inadvertent cross-reference error/omissions.

TABLE 2—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb—Continued

Section and paragraph	Technical correction and reason for change
60.5415b(k)(9)	Replace "by § 60.5423b(b) and (d)" with "by § 60.5423b(d)" to remove an inadvertent cross-reference.
60.5415b(l)(4)	Replace "§ 60.5420b(c)(16)" with "§ 60.5420b(c)(14)" to correct an inadvertent cross-reference error.
60.5416b(a) introductory text	Replace "paragraphs (b)(6) and (7)" with "paragraphs (b)(7) and (8)" to correct an inadvertent cross-reference error.
60.5416b(b)(2)	Last sentence: Replace "with this paragraph (b)(2)" with "with paragraph (b)(1)" to correct an inadvertent cross-reference error.
60.5417b(a)	First sentence: Replace "§ 60.5393b(b)(1) for your pumps" with "§ 60.5393b(b)(3) for your pumps" to correct an inadvertent cross-reference error.
60.5417b(d)(8) introductory text	Revise the first sentence to include commas before and after "other than those listed of this section".
60.5417b(i)(4)	Replace "by § 5412b(d)(4)" with "by § 60.5412b(d)(4)" to correct an inadvertent cross-reference error.
60.5417b(i)(5)	Replace "by § 5412b(d)(5)" with "by § 60.5412b(d)(5)" to correct an inadvertent cross-reference error.
60.5417b(j)	Replace "in § 60.5420b(c)(1)" with "in § 60.5420b(c)(11)" to correct an inadvertent cross-reference error.
60.5420b(b)(1)(v)(A)	Replace "paragraph (b)(v) of" with "paragraph (b)(1)(v) of" to correct an inadvertent cross-reference error.
60.5420b(b)(1)(v)(B)	Replace "paragraph (b)(v) of" with "paragraph (b)(1)(v) of" to correct an inadvertent cross-reference error.
60.5420b(b)(5)(iii)	Replace paragraph with "If required to comply with § 60.5380b(a)(2) or (3), the information specified in paragraphs (b)(11)(i) through (iv) of this section, as applicable." This adds "or (3)" and ", as applicable" to correct inadvertent cross-reference omission and to add "as applicable" to clarify that not all cited requirements may apply.
60.5420b(b)(5)(vi)	Replace "§ 60.5380b(a)(4) or (5)" with "§ 60.5380b(a)(4), (5) or (6)" to correct an inadvertent cross-reference error.
60.5420b(b)(6)(i)	Replace "May 7, 2024, or since the previous" with "May 7, 2024, since the previous" to correct grammar.
60.5420b(b)(6)(iv)	Revise paragraph to indicate that, if you are complying with § 60.5385b(d)(1) or (2), the information in paragraphs (b)(11)(i) through (iv) of the section apply and if you are complying by routing emissions to a control device, as required in § 60.5385b(d)(2), the information in paragraph (b)(11)(v) of the section applies. These revisions correct cross-reference omissions.
60.5420b(b)(7)(x)	Replace "paragraphs (b)(7)(ii)(B)" with "paragraphs (b)(7)(vi) and (vii)" to correct an inadvertent cross-reference error.
60.5420b(b)(10)(ii)	Replace "§ 60.5393b(b)(3)" with "§ 60.5393b(b)(5)" to correct an inadvertent cross-reference error.
60.5420b(b)(10)(iii)	Replace "§ 60.5393b(b)(4)" with "§ 60.5393b(b)(6)" to correct an inadvertent cross-reference error.
60.5420b(b)(10)(iv)	Replace "§ 60.5393b(b)(5)" with "§ 60.5393b(b)(7)" to correct an inadvertent cross-reference error.
60.5420b(b)(10)(v)(A)	Replace "§ 60.5393b(b)(1) or (3)" with "§ 60.5393b(b)(2), (3), or (5)" to correct inadvertent cross-reference errors.
60.5420b(b)(10)(v)(B)	a. Replace first mention of "§ 60.5393b(b)(1) or (3)" with "§ 60.5393b(b)(2), (3), or (5), as applicable," to correct inadvertent cross-reference errors/omissions; and b. Replace second mention of "§ 60.5393b(b)(1) or (3)" with "§ 60.5393b(b)(2), (3), or (5)" to correct inadvertent cross-reference errors/omissions.
60.5420b(b)(10)(vii)	a. Replace "§ 60.5393b(b)(1) or (3)" with "§ 60.5393b(b)(3) or (5)" to correct an inadvertent cross-reference error; and b. Replace "paragraph (b)(11) of this section" with "paragraphs (b)(11)(i) through (v) of this section" to correct an inadvertent cross-reference error.
60.5420b(b)(11)(v)(L)	Change both references to "§ 60.5415b(f)(x)" to "§ 60.5415b(f)(1)(x)" to correct inadvertent cross-reference errors.
60.5420b(c)(2)(i)(A)	Last sentence: Change "records all of the" to "records of all the" to correct an inadvertent typographical error.
60.5420b(c)(2)(ii)(C)	Replace "taken minimize" with "taken to minimize" to correct an inadvertent typographical error.
60.5420b(c)(2)(ii)(D)	Replace "documentation of best management practice plans steps were not followed" with "documentation of best management practice plan steps not followed" to correct a typographical error.
60.5420b(c)(3)(iv)(B)	a. Replace "§ 60.5380b" with "§ 60.5377b" to correct an inadvertent cross-reference error; and b. Replace "paragraph (c)(11)" with "paragraphs (c)(11) and (13)" to correct an inadvertent cross-reference omission.
60.5420b(c)(4)(iii) introductory text	a. Replace "self-contained wet seal compressor, or" with "self-contained wet seal compressor, centrifugal compressor equipped with sour seal oil separator and capture system, or" to correct an inadvertent reference omission; and b. Replace "§ 60.5380b(a)(4) and (5)" with "§ 60.5380b(a)(4), (5) or (6)" to correct an inadvertent cross-reference omission.
60.5420b(c)(4)(iii)(C)(*2*)	Replace "§ 60.5380b(a)(5)" with "§ 60.5380b(a)(4) through (6)" to correct inadvertent cross-reference omissions.
60.5420b(c)(5) introductory text	Replace "(c)(8), (c)(10) and (c)(12) of this section" with "(c)(8) through (13) of this section" to correct inadvertent cross-reference omissions.
60.5420b(c)(7)(iv)(A)	Replace "paragraph (c)(11)" with "paragraphs (c)(11) and (13)" to correct an inadvertent cross-reference omission.
60.5420b(c)(11) introductory text	Revised to correct inadvertent cross-reference errors/omissions.
60.5420b(c)(11)(v)	Replace both references to "§ 60.5415b(f)(x)" with "§ 60.5415b(f)(1)(x)" to correct inadvertent cross-reference errors.
60.5420b(c)(15)(iv)	Replace "§ 60.5393b(b)(3)" with "§ 60.5393b(b)(5)" to correct an inadvertent cross-reference error.
60.5420b(c)(15)(v)	a. First sentence: Replace "you must retain a record of your certification required under § 60.5393(b)(4)" with "you must retain a record of your certification required under § 60.5393(b)(6)" to correct an inadvertent cross-reference error; and b. Second sentence: Replace "paragraphs (c)(15)(ii), (iii) or (iv) of this section" with "paragraph (c)(15)(ii) and paragraph (c)(15)(iii) or (iv) of this section" to correct an inadvertent omission to clarify that complying with paragraph (c)(15)(ii) is not conditional.
60.5420b(d) introductory text	Third sentence: Replace "paragraphs (g)(1) and (2) of this section" with "paragraphs (d)(1) and (2) of this section" to correct an inadvertent cross-reference error.

TABLE 2—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb—Continued

Section and paragraph	Technical correction and reason for change
60.5421b introductory text	First sentence: Replace ''paragraphs (b)(1) through (16) of this section'' with ''paragraphs (b)(1) through (17) of this section'' to correct an inadvertent cross-reference error.
60.5421b(b) introductory text	Replace ''paragraphs (b)(1) through (16)'' with ''paragraphs (b)(1) through (17)'' to correct an inadvertent cross-reference error.
60.5421b(b)(11)(vi)	Change paragraph designation to ''(b)(11)(iv)''.
Newly designated 60.5421b(b)(11)(iv).	Replace ''paragraph (b)(11)(vi)(A) through (C)'' with ''paragraph (b)(11)(iv)(A) through (C)'' to conform cross-reference with corrected paragraph designation (see above).
60.5424b(e)(6)	Replace ''§ 60.5398b(c)(1)(ii)(D)'' with ''§ 60.5398b(c)(1)(iv)(D)'' to correct an inadvertent cross-reference error.
60.5430b ''*No identifiable emissions*'' definition.	Italicize ''emissions'' in ''*No identifiable* emissions'' to correct an inadvertent inconsistency error to make it clear that the phrase being defined is inclusive of ''emissions.''
60.5430b ''*Storage vessel*'' definition.	Subparagraph (1) of definition, second sentence: Replace ''§ 60.5420b(c)(5)(iv)'' with ''§ 60.5420b(c)(7)(v)'' to correct an inadvertent cross-reference error.
Table 3 to Subpart OOOOb of Part 60—Required Minimum Initial SO_2 Emission Reduction Efficiency (Z_i).	Table 3 is corrected by revising mathematical symbols where ''greater than or equal to'' and ''less than or equal to'' symbols were not included.
Table 4 to Subpart OOOOb of Part 60—Required Minimum SO_2 Emission Reduction Efficiency (Z_c).	Table 4 is corrected by revising mathematical symbols where ''greater than or equal to'' and ''less than or equal to'' symbols were not included.

2. Clarifying Technical Corrections

This action also makes technical corrections to clarify language in the regulatory text that was erroneously included (or in some cases, erroneously omitted). Table 3 (Clarifying Technical Corrections to 40 CFR part 60, subpart OOOOb) includes the sections and paragraphs of each identified error, the corrections being made by this action, and the reasoning for the corrections. These clarifying technical corrections do not substantively alter the regulatory text in a way that affects the regulated community or the public because they do not change any substantive standard—they simply clarify erroneous language and/or omissions. The substance of the final rule remains unchanged by making these clarifying technical corrections and therefore, the EPA finds good cause to make the clarifying technical corrections to the regulatory text of NSPS OOOOb set forth in Table 3, without prior notice and comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B).

TABLE 3—CLARIFYING TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb

Section and paragraph	Clarifying technical correction and reason for change
60.5371b(c)(4)	Replace ''within 50 meters of the latitude and longitude coordinates of the super-emitter event.'' with ''within 50 meters of the latitude and longitude coordinates of the super-emitter event, if available.'' to correct an inadvertent omission. ''If available'' is included on 89 FR 16880 in the Final Rule preamble discussion of third-party notifications that must be submitted to the Super Emitter Program Portal. This change is consistent with the Final Rule preamble discussion.
60.5385b(d)(3)	Remove ''initial'' before ''startup'' to be consistent with other referencing in the Final Rule and 89 FR 16896 of the Final Rule preamble.
60.5386b(a)(1) introductory text	Second sentence: Add ''or wet'' after ''dry'' to correct an inadvertent omission. See 89 FR 17058, § 60.5386b(a) introductory text Final Rule regulatory language which indicates that requirements also apply to wet seal compressors. This correction is consistent with the cited Final Rule regulatory language.
60.5398b(b)(5)(ii)(A)	Revised to clarify that monitoring surveys must be conducted for all the fugitive emissions components in an affected facility using either OGI or EPA Method 21 to appendix A–7 of this part; and that the procedures in your monitoring plan must be followed when conducting the survey. These revisions correct an inadvertent omission of the specific survey methods and procedures required. See 89 FR 16874 Final Rule preamble periodic screening discussion. These clarifying correction are consistent with the Final Rule preamble discussion.
60.5398b(b)(5)(iii)(A)	Revised to clarify that monitoring surveys must be conducted for all fugitive emissions components located within a 4-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of part 60. These revisions correct an inadvertent omission of the specific survey methods required. See 89 FR 16874 Final Rule preamble periodic screening discussion. This correction is consistent with the Final Rule preamble discussion.
60.5398b(b)(5)(iv)(A)	a. Delete ''the'' before ''all the fugitive emissions'' in the first sentence to omit an inadvertent typographical error; and b. Add ''using either OGI or EPA Method 21 to appendix A–7 of this part'' after ''confirmed detection'' at the end of the first sentence to correct an inadvertent omission. See 89 FR 16874 Final Rule preamble periodic screening discussion. This correction is consistent with the Final Rule preamble discussion.

TABLE 3—CLARIFYING TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb—Continued

Section and paragraph	Clarifying technical correction and reason for change
60.5400b(c)(1)	Replace ''5 calendar days using the methods'' with ''5 calendar days using OGI in accordance with Appendix K or the methods'' to correct an inadvertent omission that specifically clarifies that screening using OGI in accordance with Appendix K is an option, consistent with the Final Rule preamble. See 89 FR 16899 to 16900 Final Rule preamble discussion. This correction is consistent with the Final Rule preamble discussion.
60.5401b(h)(1)	a. Add ''all connectors'' between ''and'' and ''in light'' to include referencing consistency; and b. Add the following sentence to clarify what constitutes a leak for connectors: ''If an instrument reading greater than or equal to 500 ppmv is measured, a leak is detected.'' These corrections address inadvertent language/omission errors. Change ''a.'' is consistent with language at the beginning of the sentence that states ''monitor all connectors in gas/vapor service'' (see 89 FR 17077). Change ''b.'' includes language that indicates what constitutes a leak based on Method 21, consistent with other statements in the Final Rule preamble and regulatory text (*e.g.,* see 89 FR 17076).
60.5410b(c)(2)(i)	Replace ''another well, and submit this documentation in the initial annual report'' with ''another well, maintain the documentation in accordance with § 60.5377(g), and submit this documentation in the initial annual report as required by paragraph (c)(4) of this section'' to correct an inadvertent cross-reference error and omission of a cross-reference to the requirement to maintain documentation. See 89 FR 17084 for the Final Rule regulatory text requirements. These changes are consistent with the Final Rule regulatory text requirements.
60.5410b(c)(2)(ii)	Replace ''(ii) Submit the certification as required by § 60.5377b(g)'' with ''(ii) Maintain a copy of the certification and submit the certification as required by § 60.5377b(g)'' to correct the language to clarify that an owner or operator needs to maintain a copy of the certification. See 89 FR 17084 for the Final Rule regulatory text These changes are consistent with the Final Rule regulatory text.
60.5410b(d)(2)	Replace ''closed vent system that meets'' with ''closed vent system to a process that meets'' in the last sentence to clarify that requirements apply when emissions are routed to a process and to be consistent with the second sentence of the paragraph. See 89 FR 17084 for the Final Rule regulatory text. This change is consistent with the Final Rule regulatory text.
60.5410b(d)(6) introductory text	Delete last sentence to correct an inadvertent cross-reference error. For clarity, rather than correct reference to more broadly apply to paragraph (a), sections (d)(6)(i) through (iii) were revised to more-specifically clarify requirements for each of the three types of centrifugal compressors. (See below.) See 89 FR 16891 to 16892 of the Final Rule preamble for a discussion regarding centrifugal compressor annual volumetric flow measurement requirements. These changes are consistent with the Final Rule preamble discussion.
60.5410b(d)(6)(i)	Add the following sentence to more-specifically clarify and correct an inadvertent omission of referencing to the requirements that apply to self-contained wet seal centrifugal compressors: ''You must conduct your initial annual volumetric measurement as required by § 60.5380b(a)(4).'' For clarity, rather than correct reference to more broadly apply to paragraph (a), sections (d)(6)(i) through (iii) were revised to more-specifically clarify requirements for each of the three types of centrifugal compressors. See 89 FR 16891 to 16892 of the Final Rule preamble for a discussion regarding centrifugal compressor annual volumetric flow measurement requirements. These changes are consistent with the Final Rule preamble discussion.
60.5410b(d)(6)(ii)	Add the following sentence to more-specifically clarify and correct an inadvertent omission of referencing to the requirements that apply to centrifugal compressors on the Alaska North Slope equipped with sour seal oil separator and capture systems: ''You must conduct your initial annual volumetric measurement as required by § 60.5380b(a)(5).'' For clarity, rather than correct reference to more broadly apply to paragraph (a), sections (d)(6)(i) through (iii) were revised to more-specifically clarify requirements for each of the three types of centrifugal compressors. See 89 FR 16891 to 16892 of the Final Rule preamble for a discussion regarding centrifugal compressor annual volumetric flow measurement requirements. These changes are consistent with the Final Rule preamble discussion.
60.5410b(d)(6)(iii)	a. Replace ''dry seal compressor'' with ''dry seal centrifugal compressor'' for centrifugal compressor referencing consistency; and b. Add the following sentence to more-specifically clarify and correct an inadvertent omission of referencing to the requirements that apply to dry seal centrifugal compressors: ''You must conduct your initial annual volumetric measurement as required by § 60.5380b(a)(6).'' For clarity, rather than correct reference to more broadly apply to paragraph (a), sections (d)(6)(i) through (iii) were revised to more-specifically clarify requirements for each of the three types of centrifugal compressors. See 89 FR 16891 to 16892 of the Final Rule preamble for a discussion regarding centrifugal compressor annual volumetric flow measurement requirements. These changes are consistent with the Final Rule preamble discussion.
60.5412b(a) introductory text	Second sentence: Replace ''As an alternative to paragraphs (a)(1) through (a)(3) of this section, you may install a control device model tested under § 60.5413b(d)'' with ''As an alternative to paragraph (a)(1) of this section, you may install a combustion control device model tested under § 60.5413b(d)'' to correct an inadvertent omission that clarifies that control device model test requirements are for combustion control device models. See 89 FR 17093 for combustion device model testing regulatory text requirements. This change is consistent with the regulatory text requirements.
60.5415b(d)(2)	Revised paragraph to clarify the volumetric monitoring compliance options for each of the centrifugal compressor types. Volumetric monitoring requirements are the same for all centrifugal compressors and are repeated and referenced under differing subparagraphs of paragraph (a). See 89 FR 16891 to 16892 for a Final Rule preamble discussion of centrifugal compressor requirements. These changes are consistent with the Final Rule preamble discussion.

TABLE 3—CLARIFYING TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOb—Continued

Section and paragraph	Clarifying technical correction and reason for change
60.5415b(e)(1)	Replace ''you must continuously'' with ''you must route emissions through a closed vent system and continuously'' to correct an inadvertent omission and to clearly state that routing emissions through a closed vent system ''and'' complying with the requisite closed vent system requirements is required when routing emissions to a process. This change corrects an inadvertent omission and is consistent with the Final Rule regulatory text for similar requirements (*e.g.,* see 89 FR 17181, 17182, and 17184 for similar requirements for liquids unloading, associated gas, centrifugal compressors, and reciprocating compressors).
60.5415b(h)(1)(i)	Replace ''must comply'' with ''must route emissions through a closed vent system and continuously comply'' to correct an inadvertent omission and to clearly state that routing emissions through a closed vent system ''and'' continuously complying with the requisite closed vent system requirements is required when routing emissions to a process. This change corrects an inadvertent omission and is consistent with the Final Rule regulatory text for similar requirements (*e.g.,* see 89 FR 17181, 17182, and 17184 for similar requirements for liquids unloading, associated gas, centrifugal compressors, and reciprocating compressors).
60.5415b(h)(2)	Replace ''must comply'' with ''must route emissions to a control device through a closed vent system and continuously comply'' to correct an inadvertent omission and to clearly state that routing emissions through a closed vent system ''and'' continuously complying with the requisite closed vent system requirements is required when routing emissions to a control device. This change corrects an inadvertent omission. This change corrects an inadvertent omission and is consistent with the Final Rule regulatory text for similar requirements (*e.g.,* see 89 FR 17181, 17182, and 17184 for similar requirements for liquids unloading, associated gas, centrifugal compressors, and reciprocating compressors).
60.5415b(i)(2)(iii)	Replace ''4 tpy or greater and the increase'' with ''4 tpy or greater or methane emissions from your storage vessel affected facility increase to 14 tpy or greater and the increase'' to correct an inadvertent omission. See 89 FR 16896 to 16897 for a Final Rule preamble discussion of storage vessel requirements. This change is consistent with the Final Rule preamble discussion.
Table 5 to Subpart OOOOb of Part 60—Applicability of General Provisions to Subpart OOOOb; General provisions citation § 60.8.	Revise second sentence of ''Explanation'' column by replacing ''Performance testing is required for control devices used on storage vessels, centrifugal compressors, process controllers, and pumps complying with § 60.5393b(b)(1), except'' with ''Performance testing is required for control devices used on wells, storage vessels, centrifugal compressors, reciprocating compressors, process controllers, and pumps, as applicable, except'' to correct inadvertent affected facility omissions and to correct the referencing for pumps to exclude ''complying with § 60.5393b(b)(1)'' to be consistent with other emission source referencing. These changes correct the listing of affected facilities where the Final Rule includes control device performance testing requirements to comply and to clarify that the performance test requirements apply conditionally (*i.e.,* performance test requirements would not apply where an affected facility complies with the final rule by meeting a compliance option that does not require control device performance testing).

The EPA finds good cause to make these technical corrections and clarifications to NSPS OOOOb, identified above in Tables 2 and 3, without prior notice and comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B).

A red line and strike-out version of the corrected regulatory language for NSPS OOOOb is available in Docket ID No. EPA–HQ–OAR–2021–0317.

D. Technical Corrections for EG OOOOc

1. Cross-Reference, Paragraph Designation, and Typographical Technical Corrections

Following signature of the final rule, stakeholders and the Office of the Federal Register brought to the Agency's attention, and the EPA itself identified, inadvertent errors, including cross-reference, paragraph designation, and typographical errors, in the regulatory text of NSPS OOOOc. Table 4 (Cross-Reference, Paragraph Designation, and Typographical Technical Corrections to 40 CFR part 60, subpart OOOOc) includes the sections and paragraphs of the identified errors, the corrections being made, and the reasoning for the corrections. For the same reasons explained in Section II.C.1 discussing such corrections for NSPS OOOOb, the EPA finds good cause to make these technical corrections to the regulatory text of EG OOOOc without prior notice and comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B).

TABLE 4—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc

Section and paragraph	Technical correction and reason for change
60.5370c(b)	Replace ''§§ 60.5380c through 60.5382c'' with ''§§ 60.5379c through 60.5381c'' to correct an inadvertent cross-reference error.
60.5374c(b)	Replace ''§ 60.5367c'' with ''§ 60.5368c'' to correct an inadvertent cross-reference error.
60.5375c(a)(3)	Replace ''§ 60.14c'' with ''§ 60.14(e)'' to correct an inadvertent cross-reference error.
60.5386c(e)(2)(i)(C)	Replace ''(e)(1)(i)(A)'' with ''paragraph (e)(2)(i)(A) of this section'' to correct an inadvertent cross-reference error.
60.5388c(a)(1)	First sentence: Replace ''EPA under paragraph (e) of this section'' with ''EPA under paragraph (b) of this section'' to correct an inadvertent cross-reference error.
60.5388c(a)(2)	a. Replace paragraph (a)(2) by adding paragraph (a)(3) regulatory text to paragraph (a)(2); and b. Replace ''paragraph (a)(2)'' referencing to state ''this paragraph (a)(2)''. These corrections correct inadvertent paragraph designation and cross-reference errors.

TABLE 4—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc—Continued

Section and paragraph	Technical correction and reason for change
60.5388c(a)(3)	Remove paragraph (a)(3). The regulatory text of (a)(3) was added to paragraph (a)(2) (see above).
60.5388c(a)(4)	Change paragraph designation to (a)(3) to correct a typographical error.
60.5388c(b)(1)(v)	Replace ''paragraphs (a)(3)(i) through (v)'' with ''paragraphs (a)(2)(i) through (v)'' to correct an inadvertent cross-reference error.
60.5390c(a)(1) introductory text	Replace ''paragraphs (a)(1)(A) and (B)'' with ''paragraphs (a)(1)(i) and (ii) and (d) and (e)'' to correct inadvertent omissions of cross-references and to correct paragraph referencing.
60.5391c(b)(2)(i)	Third sentence: Replace ''§ 60.5420c(c)(2)(ii)'' with ''§ 60.5420c(c)(2)(iv)'' to correct an inadvertent cross-reference error.
60.5391c(b)(2)(ii)	Third sentence: Replace ''§ 60.5391c(b)(1)'' with ''§ 60.5391c(b)(2)'' to correct an inadvertent cross-reference error.
60.5391c(b)(2)(iv)	Replace ''§ 60.5420c(c)(3)(ii)'' with ''§ 60.5420c(c)(2)(iv)'' to correct an inadvertent cross-reference error.
60.5391c(c) introductory text	a. Second sentence: Replace ''§ 60.5412c (a), (b) and (c)'' with ''§ 60.5412c'' to correct an inadvertent cross-reference error; and b. Last sentence: Replace ''§ 60.5420c(c)(3)'' with ''§ 60.5420c(c)(2)'' to correct an inadvertent cross-reference error.
60.5391c(c)(3)	Replace ''For (a)(1) and (b)(1) of this section, through the duration'' with ''For wells complying with paragraph (a)(1) of this section, for the duration'' to correct an inadvertent addition of a cross-reference and to correct a typographical error.
60.5391c(d) introductory text	Last sentence: Replace ''§ 60.5420c(c)(3)'' with ''§ 60.5420c(c)(2)'' to correct an inadvertent cross-reference error.
60.5391c(e)(2)	Replace ''§ 60.5410c(c)(3)'' with ''§ 60.5420c(c)(2)'', and ''§ 60.5410c(b)(3)'' with ''§ 60.5420c(b)(3)'' to correct inadvertent cross-reference errors.
60.5391c(e)(3)	Replace ''paragraph (a)(d)(1)'' with ''paragraph (e)(1)'' to correct an inadvertent cross-reference error.
60.5391c(g)	Replace ''§ 60.5415c(b)(3)'' with ''§ 60.5415c(b)'' to correct an inadvertent cross-reference error.
60.5391c(h)	Replace ''perform the required recordkeeping and reporting as required by § 60.5420c(b)(3),'' with ''perform the recordkeeping and reporting as required by § 60.5420c(b)(1), (3), and (10) through (12)'' to correct inadvertent cross-reference omissions and to eliminate redundancy of the term ''required''.
60.5393c(g)	Replace ''60.5420c(b)(1), (5), (10) and (11), as applicable; and the recordkeeping requirements as specified in § 60.5420c(c)(4) and (7) through (11)'' with ''§ 60.5420c(b)(1) and (5) and (10) through (12), as applicable; and the recordkeeping requirements as specified in § 60.5420c(c)(4) and (7) through (12)'' to correct inadvertent cross-reference omissions.
60.5394c(b)(3)	Replace ''emissions through a closed vent system to a control device through a closed vent system'' with ''emissions to a control device through a closed vent system'' to correct inadvertent redundancy.
60.5395c(b)(6)(ii)	Replace ''in § 60.5420c(c)(14)(vi)'' with ''in § 60.5420c(c)(14)(v) certifying that there is no vapor recovery unit or control device on site'' to correct an inadvertent cross-reference error and to state the corrected cross-reference requirements.
60.5395c(b)(7)(iii)	Replace ''I further certify that the assessment was conducted and this report was prepared pursuant to the requirements of § 60.5395c(b)(5)(ii)'' with ''I further certify that the assessment was conducted and this report was prepared pursuant to the requirements of § 60.5395c(b)(7)(ii)'' to correct an inadvertent cross-reference error.
60.5396c(a)(3) introductory text	First sentence: Replace ''paragraphs (a)(3)(i) through (iii)'' with ''paragraphs (a)(3)(i) and (ii)'' to correct an inadvertent cross-reference error.
60.5396c(c)(1)(ii)	Replace ''required in § 60.5420c(b)(7)(viii)'' with ''required in § 60.5420c(b)(7)(vii)'' to correct an inadvertent cross-reference error.
60.5396c(c)(4)	Replace ''required in § 60.5420c(b)(7)(ix)'' with ''required in § 60.5420c(b)(7)(viii)'' to correct an inadvertent cross-reference error.
60.5398c(c)(5)(ii)	a. Second sentence: Replace ''beginning the period in paragraph (b)(5)(iii) of this section'' with ''beginning the period in paragraph (c)(5)(iii) of this section'' to correct an inadvertent cross-reference error; and b. Last sentence: Replace ''paragraph (b)(5)(iii) of this section'' with ''paragraph (c)(5)(iii) of this section'' to correct an inadvertent cross-reference error.
60.5400c(a)(1)	Last sentence: Replace ''see § 60.17'' with ''see § 60.17'' to address a typographical error (added a space between ''see'' and ''§ '').
60.5400c(k)	Replace ''§ 60.5420c(b)(1) and (10)'' with ''§ 60.5420c(b)(1) and (10) through (12), as applicable,'' to correct inadvertent cross-reference omissions.
60.5400c(l)	Replace ''§ 60.5420c(c)(7), (9), and (11)'' with ''§ 60.5420c(c)(7) and (9) through (12), as applicable,'' to correct inadvertent cross-reference omissions.
60.5401c(a) introductory text	First sentence: Replace ''requirements in paragraphs (b)'' with ''requirements in paragraph (b)'' to correct a typographical and a format error.
60.5401c(b) introductory text	First and last sentence: Replace ''in paragraphs (b)(2) through (4)'' with ''in paragraphs (b)(2) through (6)'' to correct inadvertent cross-reference errors.
60.5401c(b)(2) introductory text	Replace ''paragraphs (b)(2)(i) through (vi) of this section'' with ''paragraphs (b)(2)(i) through (v) of this section'' to correct an inadvertent cross-reference error.
60.5401c(b)(5) introductory text	Replace ''(b)(1) and (b)(2)(iv) through (vi) of this section'' with ''(b)(1) and (b)(2)(iv) and (v) of this section'' to correct an inadvertent cross-reference error.
60.5401c(c)(5)	Replace ''except as provided in paragraph (i)(4) of this section'' with ''except as provided in paragraph (i)(6) of this section'' to correct an inadvertent cross-reference error.
60.5401c(f) introductory text	Replace ''paragraphs (h)(3) through (5)'' with ''paragraphs (f)(3) through (5)'' to correct an inadvertent cross-reference error.
60.5401c(f)(1)	Replace ''paragraphs (h)(3) through (5)'' with ''paragraphs (f)(3) through (5)'' to correct an inadvertent cross-reference error.

TABLE 4—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc—Continued

Section and paragraph	Technical correction and reason for change
60.5401c(f)(3) introductory text	Replace ''the requirements in paragraphs (f) of this section'' with ''the monitoring requirements of paragraph (f) of this section'' to include cross-reference specificity to include the exemption from the monitoring requirements.
60.5401c(f)(4) introductory text	Replace ''unsafe-to-monitor pump'' with ''unsafe-to-monitor valve'' to correct a typographical error.
60.5401c(f)(5) introductory text	Replace ''paragraph (h) of this section'' with ''paragraph (f) of this section'' to correct inadvertent cross-reference error.
60.5401c(l)	Replace ''§ 60.5420c(b)(1) and (b)(10)'' with ''§ 60.5420c(b)(1) and (10) through (12), as applicable,'' to correct inadvertent cross-reference omissions.
60.5401c(m)	Replace ''§ 60.5420c(c)(7), (9), (11), and'' with ''§ 60.5420c(c)(7) and (9) through (12), as applicable, and'' to correct inadvertent cross-reference omissions.
60.5402c(d) introductory text	Replace ''60.5403c(e)'' with ''60.5406c(d)'' to correct an inadvertent cross-reference error.
60.5405c(a) introductory text	a. Replace ''§ 60.5393c(a)(2)(iv)'' with ''§ 60.5393c(a)'' to correct an inadvertent cross-reference error; and b. Replace ''§ 60.5392c(a)(2)(i)(A)'' with ''§ 60.5392c(a)(1) or (2)'' to correct an inadvertent cross reference error; and c. Add an ''s'' to ''paragraph'' introducing ''(a)(1) and (2)'' to correct a typographical error.
60.5405c(a)(2)	Replace ''§ 60.5403c(b)(1) and (2)'' with ''§ 60.5406c(b)(1) and (2)'' to correct an inadvertent cross-reference error.
60.5405c(c)(4)(ii)	Add space between ''sensor(s)'' and ''must'' to correct a typographical error.
60.5406c(c) introductory text	Replace ''§ 60.5401c(b), (c), and (f)'' with ''§ 60.5401c(b) and (f)'' to correct an inadvertent cross-reference error.
60.5410c(a)(3)(i)	Replace ''§ 60.5390c(d)'' with ''§ 60.5390c(c)'' to correct an inadvertent cross-reference error.
60.5410c(a)(4)(iv)	Replace ''You must conduct the initial'' with ''Conduct the initial'' to conform with other subparagraphs.
60.5410c(a)(4)(v)	Replace ''You must install and'' with ''Install and'' to conform with other subparagraphs.
60.5410c(a)(4)(vi)	a. Replace ''You must maintain the'' with ''Maintain the'' to conform with other subparagraphs; and b. Replace ''by § 60.5420c(b)(11) through (13), as applicable'' with ''by § 60.5420c(b)(10) through (12), as applicable'' to correct inadvertent cross-reference errors.
60.5410c(b)(1)	Replace ''§ 60.5420c(c)(2)(i) and submit the information required by § 60.5420c(b)(3)(i) through (iv)'' with ''§ 60.5420c(c)(2)(i) and (ii), as applicable, and submit the information required by § 60.5420c(b)(3)(i) through (v)'' to correct inadvertent cross-reference errors/omissions.
60.5410c(b)(2)	Replace ''initial annual report, and'' with ''initial annual report as required by paragraph (b)(5) of this section, and'' to correct an inadvertent cross-reference omission.
60.5410c(b)(3)	a. First sentence: Replace ''§ 60.5391c(e)(1) and'' with ''§ 60.5391c(b)(2), maintain the documentation in accordance with § 60.5391c(b)(2)(iv), and'' to correct inadvertent cross-reference error/omission; and b. Second sentence: Replace ''initial annual report, and'' with ''initial annual report as required by paragraph (b)(5) of this section, and'' to correct an inadvertent cross-reference omission.
60.5410c(b)(4) introductory text	Replace ''§ 60.5391c(b), you must comply with paragraphs (b)4)((i) through (iv) of this section'' with ''§ 60.5391c(b) or (c), you must comply with paragraphs (b)(4)(i) through (vi) of this section.'' to correct inadvertent cross-reference error/omission, to correct the format of the paragraph reference, and to add punctuation (a period).
60.5410c(b)(4)(v)	Replace ''§ 60.5417c(a) through (g)'' with ''§ 60.5417c(a) through (i)'' to correct an inadvertent cross-reference error.
60.5410c(b)(4)(vi)	Replace ''60.5420c(c)(2)(ii) and'' with ''60.5420c(c)(2)(ii) and (v), and'' to correct an inadvertent cross-reference omission.
60.5410c(e) introductory text	Second sentence: a. Replace ''If you change compliance methods, you must perform'' with ''If you change compliance methods, you must also perform'' to correct an inadvertent omission to clarify that performing applicable compliance demonstrations is an additional requirement when there is a change in compliance methods. b. Replace ''records required by paragraph (e)(1)(i) or (ii) of this section, for'' with ''records required by paragraph (e)(1)(i) or (ii) of this section, as applicable, for'' to correct an inadvertent omission to indicate that records required are dependent on the new compliance method.
60.5410c(e)(1) introductory text	Replace ''paragraph (e)(3) of this section'' with ''paragraphs (e)(1)(i) and (ii) of this section'' to correct an inadvertent cross-reference error.
60.5410c(e)(2)(iv)(C)	Replace ''continuous compliance requirements of § 60.5415c(g)'' with ''continuous compliance requirements of § 60.5415c(e)'' to correct an inadvertent cross-reference error.
60.5410c(e)(2)(iv)(D)	Replace ''§ 60.5417c(a) through (g), as applicable'' with ''§ 60.5417c(a) through (i), as applicable'' to correct an inadvertent cross-reference error.
60.5410c(f)(1) introductory text	Second sentence: ''paragraphs (f)(1)(i) and (v) of this section'' with ''paragraphs (f)(1)(i) through (v) of this section'' to correct inadvertent cross-reference omissions.
60.5410c(f)(2)(iii)	Replace ''§ 60.5395c(b)(5)(i)'' with ''§ 60.5395c(b)(7)(i)'' to correct an inadvertent cross-reference error.
60.5410c(f)(3)	Replace ''§ 60.5420c(b)(1) and (9)'' with ''§ 60.5420c(b)(1) and (9) through (12), as applicable'' to correct inadvertent cross-reference omissions.
60.5410c(g)(11)(iii)	Replace ''§ 60.5415c(d)'' with ''§ 60.5415c(e)'' to correct an inadvertent cross-reference error.
60.5410c(g)(11)(v)	Replace ''§ 60.5417c(a) through (g)'' with ''§ 60.5417c(a) through (i)'' to correct an inadvertent cross-reference error.
60.5410c(g)(12)	Replace ''§ 60.5400c(h) or § 60.5400c(i)'' with ''§ 60.5400c(h) or § 60.5401c(i)'' to correct an inadvertent cross-reference error.
60.5410c(h)(4)	Replace ''continuous compliance requirements of § 60.5415c(h)'' with ''continuous compliance requirements of § 60.5415c(e)'' to correct an inadvertent cross-reference error.
60.5410c(h)(6)	Replace ''§ 60.5417c(a) through (g)'' with ''§ 60.5417c(a) through (i)'' to correct an inadvertent cross-reference error.
60.5411c(b)(4)	Replace ''paragraphs (b)(2)(i) through (iii) of this section'' with ''paragraphs (b)(2)(i) through (iv) of this section'' to correct an inadvertent cross-reference error.

TABLE 4—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc—Continued

Section and paragraph	Technical correction and reason for change
60.5412c(a) introductory text	a. Replace "§ 60.5391c(b) for your well designated facility with associated gas" with "§ 60.5391c(b) or (c) for your well designated facility with associated gas" to correct an inadvertent cross-reference omission; and b. Replace "§ 60.5395c(b)(1) for your pumps designated facility" with "§ 60.5395c(b)(3) for your pumps designated facility" to correct an inadvertent cross-reference error.
60.5412c(a)(3)(iii) and (iv)	For variables "NHVcz" and "NHVdil" correct so that "cz" and "dil" are subscripts to correct inadvertent typographical errors.
60.5412c(c)(1)(i)	Replace "§ 60.5420c(c)(9) and (11)" with "§ 60.5420c(c)(10)" to correct an inadvertent cross-reference error.
60.5413c introductory text	a. First sentence: Replace "process controller, pump designated facilities complying with § 60.5393c(b)(1), or process unit equipment designated facility" with "process controller, pump, or process unit equipment designated facilities" to be consistent with other referencing in the paragraph; and b. Last sentence: Replace "pump designated facilities complying with § 60.5393c(b)(1)" with "pump" to be consistent with other referencing in the paragraph.
60.5415c(a)	a. Second sentence: Replace "each gas well liquids unloading well affected facility" with "each gas well liquids unloading well designated facility" to correct an inadvertent typographical error; and b. Last sentence: Replace "specified in paragraph (f) of this section and maintain the records in § 60.5420c(c)(7), (9), and (11)" with "specified in paragraph (e) of this section, maintain the reports in § 60.5420c(b)(10)(i) through (iv), and maintain the records in § 60.5420c(c)(7), (9), and (11)" to correct an inadvertent cross-reference error and omissions.
60.5415c(c)(2)	First sentence: Replace "§ 60.5416c(a) and (b)" with "§ 60.5416c" to correct an inadvertent referencing error (there are only two paragraphs in § 60.5416c (*i.e.,* the referenced (a) and (b) paragraphs)).
60.5415c(d)(1)	a. First sentence: Replace "requirements of § 60.5395c(b)(1) or (3), you must continuously comply with the closed vent requirements of § 60.5416c(a) and (b)" with "requirements of § 60.5395c(b)(2) or (3), you must continuously comply with the closed vent system requirements of § 60.5416c" to correct an inadvertent referencing error (there are only two paragraphs in § 60.5416c (*i.e.,* the referenced (a) and (b) paragraphs)), and to correct an inadvertent cross-reference error; and b. Last sentence: Replace "requirements in paragraph (d) of this section" with "requirements in paragraph (e) of this section" to correct an inadvertent cross-reference error.
60.5415c(d)(2)	Replace "§ 60.5420c(b)(1), and (9) through (12)" with "§ 60.5420c(b)(1) and (9) and (b)(10)(i) through (iv)" to correct inadvertent cross-reference errors.
60.5415c(d)(3)	Replace "§ 60.5420c(c)(14)," with "§ 60.5420c(c)(7), (9), (11), and (14)," to correct inadvertent cross-reference omissions.
60.5415c(e) introductory text	Replace "from either paragraph (a), (b), (c)(2), (d)(1), (f), (g)(2)(iv), (h) or (i) of this section" with "from paragraphs (a), (b), (c)(2), (d)(1), (f)(2), (g)(2), (h)(5)(ii)(B), or (i)(12) of this section" to correct inadvertent cross-reference errors.
60.5415c(e)(1)(ix)(D)(*1*)	First sentence: Replace "§ 60.5387c(a)" with "§ 60.5387c" to correct an inadvertent cross-reference error.
60.5415c(e)(1)(ix)(D)(*2*)	First sentence: Replace "§ 60.5387c(a)" with "§ 60.5387c" to correct an inadvertent cross-reference error.
60.5415c(f) introductory text	Revised to correct inadvertent cross-reference errors/omissions.
60.5415c(f)(1)	Replace "§ 60.5393c(b)" with "§ 60.5393c(b) or (c)" to correct an inadvertent cross-reference omission.
60.5415c(f)(6)	Replace "§ 60.5420c(c)(4), (7), (9), and (11)," with "§ 60.5420c(c)(4), (7) through (9), and (11)," to correct inadvertent cross-reference omissions.
60.5415c(g)(2)	Replace "paragraph (f)" with "paragraph (e)" to correct an inadvertent cross-reference error.
60.5415c(g)(4)	Replace "§ 60.5420c(c)(5)" with "§ 60.5420c(c)(5), (7), (9), and (11)," to correct inadvertent cross-reference omissions.
60.5415c(h)(3)	Replace "§ 60.5396c(c)(1), by complying with paragraphs (h)(6) and (7), and (h)(9) and (10) of this section" with "§ 60.5396c(c)(1) or (2), by complying with paragraphs (h)(6), (7), (9) and (10) of this section" to correct inadvertent cross-reference error/omission and to conform paragraph referencing for purposes of format consistency.
60.5415c(h)(4)	Replace "§ 60.5396c(c)(1) by" with "§ 60.5396c(c)(3) and (4) by" to correct inadvertent cross-reference error/omissions.
60.5415c(h)(9)	Replace "§ 60.5420c(b)(1) and (7)" with "§ 60.5420c(b)(1) and (7) and (b)(10)(i) through (iv)" to correct inadvertent cross-reference omissions.
60.5415c(i) introductory text	a. First sentence after title: Replace "paragraphs (i)(1) through (4) and (11) through (16) of this section" with "paragraphs (i)(1) through (4) and (11) through (15) of this section" to correct an inadvertent cross-reference error; and b. Last sentence: Replace "paragraphs (i)(5) through (16) of this section" with "paragraphs (i)(5) through (15) of this section" to correct an inadvertent cross-reference error.
60.5415c(i)(12)	Replace "paragraph (f) of this section" with "paragraph (e) of this section" to correct an inadvertent cross-reference error.
60.5415c(i)(13)	Replace "§ 60.5400c(h) or § 60.5400c(i)" with "§ 60.5400c(h) or § 60.5401c(i)" to correct an inadvertent cross-reference error.
60.5415c(i)(14)	Replace "§ 60.5420b(b)(10)(i)" with "§ 60.5420c(b)(10)(i)" to correct an inadvertent typographical error.
60.5415c(j)(4)	Replace "§ 60.5420c(c)(15)" with "§ 60.5420c(c)(13)" to correct an inadvertent cross-reference error.
60.5416c(a) introductory text	Replace "except as provided in paragraphs (b)(6) and (7) of this section" with "except as provided in paragraphs (b)(7) and (8) of this section" to correct inadvertent cross-reference errors.
60.5416c(a)(3)(iii)	Replace "§ 60.5397b(g)" with "§ 60.5397c(g)" to correct an inadvertent typographical error.
60.5417c(a)	Replace "§ 60.5393c(b)(1) for your pumps designated facility" with "§ 60.5395c(b)(1) for your pumps designated facility" to correct an inadvertent cross-reference error.
60.5417c(d)(8) introductory text	Amend first sentence to correct inadvertent punctuation errors (commas are added after "enclosed combustion device" and after the first "of this section").

TABLE 4—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc—Continued

Section and paragraph	Technical correction and reason for change
60.5417c(d)(8)(iii) introductory text	Replace ''operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C)(*1*),'' with ''operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C),'' to correct an inadvertent cross-reference error.
60.5417c(d)(8)(iii)(B)	Replace ''60.5415c(e)(1)(vii)(B) or (C)(*1*), or paragraph (d)(8)(iii) of this section'' with ''60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii)'' to correct an inadvertent cross-reference error.
60.5417c(d)(8)(iii)(C)	Replace ''§ 60.5415c(e)(1)(vii)(B) or (C)(1), or paragraph (d)(8)(iii) of this section'' with ''§ 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii)'' to correct an inadvertent cross-reference error.
60.5417c(d)(8)(iii)(E)	Replace ''applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C)(1), or paragraph (d)(8)(iii) of this section'' with ''applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii)'' to correct an inadvertent cross-reference error.
60.5417c(d)(8)(iii)(G)	Last sentence: Replace ''operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C)(1), or paragraph (d)(8)(iii) of this section'' with ''operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii)'' to correct an inadvertent cross-reference error.
60.5420c(a) introductory text	Last sentence: Replace ''paragraph (a)(4) of this section'' with ''paragraph (a)(3) of this section'' to correct an inadvertent cross-reference error.
60.5420c(a)(3) introductory text	Replace ''paragraph (a)(4)(i) and (ii)'' with ''paragraph (a)(3)(i) and (ii)'' to correct an inadvertent cross-reference error.
60.5420c(b)(3)(i)(B) introductory text.	Replace ''in accordance with § 60.5377c(c)'' with ''in accordance with § 60.5391c(c).'' to correct an inadvertent cross-reference error and to correct a punctuation error (added a period).
60.5420c(b)(3)(i)(B)(*1*)	Replace ''§ 60.5377c(c)(1), (2), (3), or (4)'' with ''§ 60.5391c(c)(1), (2), (3), or (4)'' to correct an inadvertent cross-reference error.
60.5420c(b)(3)(ii)(A)	Replace ''The reason in § 60.5377c(d)(1), (2), or (3) for each incident'' with ''The reason in § 60.5391c(d)(1), (2), or (3) for each incident'' to correct an inadvertent cross-reference error.
60.5420c(b)(3)(iii)(C)	Replace ''in accordance with paragraph (c)(3)(ii) of this section'' with ''in accordance with paragraph (b)(3)(ii) of this section'' to correct an inadvertent cross-reference error.
60.5420c(b)(3)(iii)(E)	a. Replace ''complies with the requirements of § 60.5391c(c)'' with ''complies with the requirements of § 60.5391c(b)'' to correct an inadvertent cross-reference error; and b. In two places, replace ''§ 60.5377c'' with ''§ 60.5391c'' to correct inadvertent cross-reference errors.
60.5420c(b)(3)(v)	Replace ''specified in paragraph (c)(2)(iii) of this section'' with ''specified in paragraph (c)(2)(vi) of this section'' to correct an inadvertent cross-reference error.
60.5420c(b)(4) introductory text	Revised introductory text to correct an inadvertent cross-reference error and to simplify the referencing of reporting requirements that apply to all centrifugal compressors.
60.5420c(b)(5)(iv)	Replace ''If complying with § 60.5393c(d)'' with ''If complying with § 60.5393c(d)(1) or (2)'' to correct an inadvertent cross-reference error.
60.5420c(b)(6)(ii)(B)	Replace ''§ 60.5394c(a)(1)'' with ''§ 60.5394c(a)(2)'' to correct an inadvertent cross-reference error.
60.5420c(b)(6)(v)	Replace ''specified in (b)(10)(i) through (iii) of this section'' with ''specified in (b)(10)(i) through (iv) of this section'' to correct an inadvertent cross-reference error.
60.5420c(b)(8)(i)(F)	Replace ''paragraph (a)(5)'' with ''paragraph (a)(3)'' to correct an inadvertent cross-reference error.
60.5420c(b)(8)(ii)(C)	Replace ''§ 60.5397c(c)(1), (2), and (7), (c)(8)(i), or (d)'' with ''§ 60.5397c(c)(1), (2), (7), and (8) or (d)'' to correct an inadvertent cross-reference error.
60.5420c(b)(9)(v)(B)	Replace ''§ 60.5395c(b)(1) or (3), as applicable. by'' with ''§ 60.5395c(b)(1) or (3), as applicable, by'' to correct a typographical punctuation error (changed ''.'' to a '','').
60.5420c(b)(9)(vi)	Replace ''paragraphs (b)(11)(i) through (iv) of this section'' with ''paragraphs (b)(10)(i) through (iv) of this section'' to correct an inadvertent cross-reference error.
60.5420c(b)(9)(vii)	Replace ''paragraph (b)(11) of this section'' with ''paragraph (b)(10) of this section'' to correct an inadvertent cross-reference error.
60.5420c(b)(10)(v)(L)	In two places, replace ''§ 60.5415c(e)(x)'' with ''§ 60.5415c(e)(1)(x)'' to correct inadvertent cross-reference errors.
60.5420c(b)(10)(v)(P)	Replace ''paragraphs (b)(11)(v)(N) or (O) of this section'' with ''paragraph (b)(10)(v)(N) or (O) of this section'' to correct an inadvertent cross-reference error.
60.5420c(c)(1)(i)(A)	Replace ''§ 60.5376c(a)(1)'' with ''§ 60.5390c(a)(1)'' to correct an inadvertent cross-reference error.
60.5420c(c)(1)(ii)(C)	Replace ''best management practice plan step taken minimize emissions'' with ''best management practice plan step taken to minimize emissions'' to correct a typographical omission of ''to''.
60.5420c(c)(2)(i)(B) introductory text.	Replace ''§ 60.5377c(c)'' with ''§ 60.5391c(c)'' to correct an inadvertent cross-reference error.
60.5420c(c)(2)(i)(B)(*1*)	Replace ''§ 60.5377c(c)(1), (2), (3), or (4)'' with ''§ 60.5391c(c)(1), (2), (3), or (4)'' to correct an inadvertent cross-reference error.
60.5420c(c)(2)(ii) introductory text	Replace ''§ 60.5377c(d)'' with ''§ 60.5391c(d)'' to correct an inadvertent cross-reference error.
60.5420c(c)(2)(iv)	In two places, replace ''§ 60.5377c'' with ''§ 60.5391c'' to correct inadvertent cross-reference errors.
60.5420c(c)(2)(v)(B)	Replace ''§ 60.5392c'' with ''§ 60.5391c'' to correct an inadvertent cross-reference error.
60.5420c(c)(3)(ii) introductory text	a. First sentence: Replace ''paragraphs (c)(3)(ii)(A) through (F)'' with ''paragraphs (c)(3)(ii)(A) through (E)'' to correct an inadvertent cross-reference error; and b. Last sentence: Replace ''paragraphs (c)(3)(ii)(C) through (E)'' with ''paragraphs (c)(3)(ii)(B) through (E)'' to correct an inadvertent cross-reference error.
60.5420c(c)(3)(ii)(A)	Replace ''emission reduction standard in with a control device,'' with ''emission reduction standard in § 60.5392c(a)(3) and (4) with a control device,'' to correct inadvertent cross-reference omissions.
60.5420c(c)(3)(iii)(C)	Replace ''paragraphs (c)(3)(iii)(C)(*1*) through (*7*)'' with ''paragraphs (c)(3)(iii)(C)(*1*) through (*6*)'' to correct an inadvertent cross-reference error.
60.5420c(c)(4) introductory text	Replace ''paragraphs (c)(4)(i) through (vi), and (7), (9) and (11) of this section'' with ''paragraphs (c)(4)(i) through (x) and (c)(7) through (12) of this section'' to correct inadvertent cross-reference errors/omissions.

TABLE 4—CROSS-REFERENCE, PARAGRAPH DESIGNATION, AND TYPOGRAPHICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc—Continued

Section and paragraph	Technical correction and reason for change
60.5420c(c)(4)(ii)	Add ", where applicable" at the end of the sentence to correct an inadvertent omission to clarify that requirements apply conditionally.
60.5420c(c)(5)(ii)(A) introductory text.	Replace "§ 60.5390c(a)" with "§ 60.5394c(a)" to correct an inadvertent cross-reference error.
60.5420c(c)(6)(ii)	Replace "§ 60.5396c(e)" with "§ 60.5386c(e)" to correct an inadvertent cross-reference error.
60.5420c(c)(10) introductory text	a. Replace "§ 60.5395c(b)(1) for your pump designated facility" with "§ 60.5395c(b)(3) for your pump designated facility" to correct an inadvertent cross-reference error; and b. Replace "§ 60.5390c(f) for well designated facility gas well liquids unloading" with "§ 60.5390c(g) for well designated facility gas well liquids unloading" to correct an inadvertent cross-reference error.
60.5420c(c)(10)(v)	In two places, replace "§ 60.5415c(e)(x)" with "§ 60.5415c(e)(1)(x)" to correct inadvertent cross-referencing errors.
60.5420c(c)(14) introductory text	Replace "paragraphs (c)(14)(i) through (viii) of this section" with "paragraphs (c)(14)(i) through (ix) of this section, as applicable" to correct an inadvertent cross-reference omission.
60.5420c(d) introductory text	Replace "paragraphs (g)(1) and (2)" with "paragraphs (d)(1) and (2)" to correct an inadvertent cross-reference error.
60.5421c introductory text	Replace "(b)(1) through (16)" with "(b)(1) through (17)" to correct an inadvertent cross-reference error.
60.5421c(b) introductory text	Replace "paragraphs (b)(1) through (16)" with "paragraphs (b)(1) through (17)" to correct an inadvertent cross-reference error.
60.5424c(e)(6)	Replace "§ 60.5398c(c)(1)(ii)(D)" with "§ 60.5398c(c)(1)(iv)(D)" to correct an inadvertent cross-reference error.
60.5430c, "*Initial calibration value*" definition.	Replace "§ 60.5403c" with "§ 60.5406c" to correct an inadvertent cross-reference error.
60.5430c, "*Repaired*" definition	Subparagraph (2) of definition: a. Replace "60.5400c(b) and (b)(1)" with "60.5400c(b) introductory text" to correct an inadvertent cross-reference error; and b. Replace "§ 60.5403c" with "§ 60.5406c" to correct an inadvertent cross-reference error.
60.5430c, "*Storage vessel*" definition.	Subparagraph (1) of definition, second sentence: Replace "§ 60.5420b(c)(4)(iv)" with "§ 60.5420b(c)(6)(v)" to correct an inadvertent cross-reference error.
Table 1 to Subpart OOOOc, Designated Facility Entries.	Replace "Process Controller", "Pump" and "Super Emitter Emissions Events" with "Process Controllers", "Pumps" and "Super Emitter Events" to correct typographical errors.
Table 1 to Subpart OOOOc, Model Rule Presumptive Standards Section Entry for "Process Unit Equipment".	Replace entry "c. Process unit equipment requirement exceptions—§ 60.5401c" with "c. Process unit equipment requirement exceptions—§ 60.5402c" to correct an inadvertent cross-reference error.

2. Clarifying Technical Corrections

This action also makes technical corrections to clarify language in the regulatory text of EG OOOOc that was erroneously included (or in some cases, erroneously omitted). Table 5 (Clarifying Technical Corrections to 40 CFR part 60, subpart OOOOc) includes the sections and paragraphs of the identified errors, the corrections being made, and the reasoning for the corrections. For the same reasons explained in Section II.C.2 discussing such corrections for NSPS OOOOb, the EPA finds good cause to make these clarifying technical corrections to the regulatory text of EG OOOOc, without prior notice and comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B).

TABLE 5—CLARIFYING TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc

Section and paragraph	Clarifying technical correction and reason for change
60.5392c(a) introductory text	Revise the first to eliminate redundancy (dry seal compressor requirements included in above changes). See 89 FR 16892 to 16894 for the Final Rule preamble summary of centrifugal compressor requirements. These changes are consistent with the Final Rule preamble discussion.
60.5398c(b)(5)(ii)(A)	Correcting for an inadvertent omission and to clearly state the required monitoring survey methods. See 89 FR 16874 periodic screening Final Rule preamble discussion. This correction is consistent with the Final Rule preamble discussion.
60.5398c(b)(5)(iii)(A)	Replace "You must conduct a monitoring survey of all your fugitive emissions components located within a 4-meter radius of the location of the periodic screening's confirmed detection" with "You must conduct a monitoring survey of all the fugitive emissions components located within a 4-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of this part" to correct an inadvertent omission and to clearly state the required monitoring survey methods. See 89 FR 16874 periodic screening Final Rule preamble discussion. This correction is consistent with the Final Rule preamble discussion.
60.5398c(b)(5)(iv)(A)	Replace "You must conduct a monitoring survey of the all the fugitive emissions components located within a 1-meter radius of the location of the periodic screening's confirmed detection" with "You must conduct a monitoring survey of all the fugitive emissions components located within a 1-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of this part" to correct an inadvertent omission and to clearly state the required monitoring survey methods. See 89 FR 16874 periodic screening Final Rule preamble discussion. This correction is consistent with the Final Rule preamble discussion.

TABLE 5—CLARIFYING TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART OOOOc—Continued

Section and paragraph	Clarifying technical correction and reason for change
60.5410c(c)(2)	Replace ''§ 60.5411c(a) and (c)'' with ''§ 60.5411c(a) and (c) and is routed to a control device or process'' to correct an inadvertent omission to clarify that emissions are routed to a control device or process. This change is also consistent with paragraph (a)(5) of § 60.5392c of the Final Rule. See 89 FR 17150 for regulatory text.
60.5410c(d)(2)	Replace ''rod packing emissions collection system as required'' with ''rod packing emissions collection system to a process as required'' to correct an inadvertent omission to clarify that emissions from the rod packing emissions collection system are routed to a process. This change is also consistent with paragraph (d)(1) of § 60.5393c of the Final Rule. See 89 FR 17151 for regulatory text.
60.5410c(f) introductory text	Replace ''you must perform the applicable compliance demonstrations'' with ''you must also perform the applicable compliance demonstrations'' to correct an inadvertent omission to emphasize that performing applicable compliance demonstrations is ''also'' required when there is a change in compliance methods. This change does not change the requirements but adds emphasis that this is an additional requirement when changing compliance methods.
60.5410c(g) introductory text	Second sentence: Replace ''meet the exemption'' with ''meet and comply with the exemption'' to correct an inadvertent omission. This change does not change requirements and is consistent with the phrasing ''meet and comply with the exception'' in the same sentence of this paragraph. See 89 FR 17172 for regulatory text.
60.5410c(g)(14)	Replace ''§ 60.5422c and the annual reports in § 60.5420c(b)(10)(i) through (iv), as applicable'' with ''§ 60.5422c'' to reduce redundancy. The reporting requirements included in § 60.5420c(b)(10) are already cited in paragraph (b)(11)(vi) of § 60.5420c. See 89 FR 17172 for regulatory text.
60.5415c(c) introductory text	Second sentence: Replace ''for each wet seal and dry seal centrifugal compressor designated facility complying with § 60.5392c(a)(3) and (a)(4) or'' with ''for each centrifugal compressor designated facility complying with § 60.5392c(a)(3) and either (a)(4) or'' to correct an inadvertent technical error. See 89 FR 16892 to 16894 for a Final Rule preamble discussion of centrifugal compressor requirements. These changes are consistent with the Final Rule preamble discussion. Paragraph (a)(4) specifies requirements when routing emissions to a control device is used to meet the standard, and paragraph (a)(5) specifies requirements when routing emissions to a process is used to meet the standard. See 89 FR 17150 for relevant § 60.5392 regulatory text.
60.5417c introductory text	Replace ''reciprocating compressor, process controller, storage vessel,'' with ''reciprocating compressor, process controller, pump, storage vessel,'' to correct an inadvertent omission. This change corrects the inadvertent omission of the listing of ''pump'' designated facilities. Pump designated facilities, as with the other listed designated facilities are also required to demonstrate continuous compliance for each control device used to meet emission standards. See 89 FR 16883 to 16885 of the Final Rule preamble for the preamble discussion of the Final Rule requirements for pumps, which includes an option to route emissions to a control device.
60.5420c(b)(10) introductory text	Last sentence: Replace ''For each centrifugal compressor and storage vessel'' with ''For each centrifugal compressor, reciprocating compressor, and storage vessel'' to correct an inadvertent omission to clarify that requirements also apply to reciprocating compressors equipped with a cover. This change is consistent with § 60.5411c introductory text and paragraph (b) of § 60.5411c of the Final Rule. See 89 FR 17173 for the Final Rule § 60.5411c regulatory text. See also, the Final Rule preamble discussion on the requirements for reciprocating compressors when routing emissions from the rod packing to a process or to a control device that reduces emissions by 95 percent at 89 FR 16896.
Table 4 to Subpart OOOOc of Part 60—Applicability of General Provisions to Subpart OOOOc; General provisions citation § 60.8.	Amend second sentence of ''Explanation'' column by replacing ''Performance testing is required for control devices used on storage vessels, centrifugal compressors, and pumps, except that performance testing is not required for a control device used solely on pump(s).'' with ''Performance testing is required for control devices used on wells, storage vessels, centrifugal compressors, reciprocating compressors, process controllers, and pumps, as applicable, except that performance testing is not required for a control device used solely on pump(s).'' These changes correct the inadvertent omission of the listing of some designated facilities where the Final Rule includes control device performance testing requirements to comply and to clarify that the performance test requirements apply conditionally (*i.e.,* performance test requirements would not apply where a designated facility complies with the Final Rule by meeting a compliance option that does not require control device performance testing).

The EPA finds good cause to make these technical corrections and clarifications to NSPS OOOOc, identified above in Tables 4 and 5, without prior notice or comment, as these procedures are unnecessary, in accordance with APA section 553(b)(B).

A red line and strike-out version of the corrected regulatory language for NSPS OOOOc is available in Docket ID No. EPA–HQ–OAR–2021–0317.

III. Summary of Cost, Environmental, and Economic Impacts

The technical corrections included in this action do not alter the substantive requirements of the final rule, and will therefore have no cost, environmental, energy, or economic impacts beyond those already presented in the March 8, 2024, 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 16820) and the accompanying Regulatory Impact Analysis.

IV. Rulemaking Procedures

As noted in section I.C., the EPA's authority for the rulemaking procedures followed in this action is provided by APA section 553.[6] In general, an agency issuing a rule under the procedures in APA section 553 must provide prior notice and an opportunity for public

[6] Although the procedural requirements of CAA section 307(d) apply to the EPA's promulgation or revision of any standard of performance under CAA section 111, these procedural requirements do not apply ''in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of [APA section 553(b)].'' CAA section 307(d)(1).

comment, but APA section 553(b)(B) includes an exemption from notice-and-comment requirements ''when the Agency for good cause finds (and incorporates the finding and a brief statement of reasons, therefore, in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The EPA has determined that there is good cause to forego prior notice-and-comment procedures here because such procedures are unnecessary. The EPA is making only minor, non-substantive technical corrections and clarifications in this action; providing the public with prior notice and the opportunity for comment is unnecessary because these corrections do not change any substantive requirement of the final rule.

This action is effective immediately upon publication. Section 553(d)(3) of the APA requires publication of a final rule to precede the effective date by at least 30 days unless, as relevant here, the Agency finds good cause to make the rule effective sooner. The Agency finds that there is good cause to make the rule effective immediately upon publication under APA section 553(d)(3). See *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996) (in determining whether good cause exists to make a rule immediately effective, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling''). This action addresses erroneous language (and in some cases, erroneous omissions) in the regulatory text of the final rule which, if not corrected, will lead to compliance difficulties and confusion among the regulated community about how to comply with the final rule. As the final rule is already in effect, it is critical to ensure that the regulated community and the public can rely on regulatory text that is accurate and complete. Moreover, because this action does not impose any new requirements, the regulated community does not need time to prepare for this interim final rule to come into effect.

V. Request for Comment

As explained in section IV of this document, the EPA finds good cause to issue this interim final rule without prior notice or opportunity for public comment. However, the EPA is providing an opportunity for the public to comment on the content of the technical corrections to the regulatory text being made by this action and, thus, requests comment on the revisions described herein. The EPA is not reopening for comment any provisions of the March 2024 final rule other than the specific corrections made in this interim final rule.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, as Amended by Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The information collection activities for NSPS OOOOa, NSPS OOOOb, EG OOOOc have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The ICR document that the EPA prepared has been assigned OMB Control No. 2060–0721 and EPA ICR number 2523.07. The final rule ICR has been submitted to OMB as of May 1, 2024, and is awaiting approval. You can find a copy of the previously submitted ICR in EPA–HQ–OAR–2021–0317.

This action does not change the information collection requirements.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action corrects unintended errors in the March 2024 final rule.

E. 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.

F. 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 will implement corrections and clarifications to regulatory text applicable directly to the regulated industry that needed clarification or that were erroneously included in the final rule. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The EPA does not believe there are disproportionate risks to children because of this action since it will not result in any changes to the control of air pollutants.

H. 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.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards; therefore, the NTTAA does not apply.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing our Nation's Commitment to Environmental Justice for All

The EPA believes that this action does not concern human health or environmental conditions and, therefore, cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801–808, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section IV of this document, including the basis for that finding.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA corrects 40 CFR part 60 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart OOOOa—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015 and on or Before December 6, 2022

■ 2. Amend § 60.5430a by revising the definition for ''*Equipment*'' to read as follows:

§ 60.5430a What definitions apply to this subpart?

* * * * *

Equipment, as used in the standards and requirements in this subpart relative to the equipment leaks of GHG (in the form of methane) and VOC from onshore natural gas processing plants, means each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by those same standards and requirements in this subpart.

* * * * *

■ 3. Revise table 1 to subpart OOOOa to read as follows:

TABLE 1 TO SUBPART OOOOa OF PART 60—REQUIRED MINIMUM INITIAL SO_2 EMISSION REDUCTION EFFICIENCY (Z_i)

H_2S content of acid gas (Y), (%)	Sulfur feed rate (X), LT/D			
	2.0 ≤ X ≤ 5.0	5.0 < X ≤ 15.0	15.0 < X ≤ 300.0	X > 300.0
Y ≥ 50	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 99.9, whichever is smaller.		
20 ≤ Y < 50	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 97.9, whichever is smaller		97.9
10 ≤ Y < 20	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 93.5, whichever is smaller	93.5	93.5
Y < 10	79.0	79.0	79.0	79.0

■ 4. Revise table 2 to subpart OOOOa to read as follows:

TABLE 2 TO SUBPART OOOOa OF PART 60—REQUIRED MINIMUM SO_2 EMISSION REDUCTION EFFICIENCY (Z_c)

H_2S content of acid gas (Y), (%)	Sulfur feed rate (X), LT/D			
	2.0 ≤ X ≤ 5.0	5.0 < X ≤ 15.0	15.0 < X ≤ 300.0	X > 300.0
Y ≥ 50	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 99.9, whichever is smaller.		
20 ≤ Y < 50	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 97.5, whichever is smaller		97.5
10 ≤ Y < 20	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 90.8, whichever is smaller	90.8	90.8
Y < 10	74.0	74.0	74.0	74.0

* * * * *

Subpart OOOOb—Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022

■ 5. Amend § 60.5365b by revising and republishing paragraphs (e), (g), (h), and (i) to read as follows:

§ 60.5365b Am I subject to this subpart?

* * * * *

(e) Each storage vessel affected facility, which is a tank battery that has the potential for emissions as specified in either paragraph (e)(1)(i) or (ii) of this section. A tank battery with the potential for emissions below both of the thresholds specified in paragraphs

(e)(1)(i) and (ii) of this section is not a storage vessel affected facility provided the owner/operator keeps records of the potential for emissions calculation for the life of the storage vessel or until such time the tank battery becomes a storage vessel affected facility because the potential for emissions meets or exceeds either threshold specified in either paragraph (e)(1)(i) or (ii) of this section.

(1)(i) Potential for VOC emissions equal to or greater than 6 tons per year (tpy) as determined in paragraph (e)(2) of this section.

(ii) Potential for methane emissions equal to or greater than 20 tpy as determined in paragraph (e)(2) of this section.

(2) The potential for VOC and methane emissions must be calculated as the cumulative emissions from all storage vessels within the tank battery as specified by the applicable requirements in paragraphs (e)(2)(i) through (iii) of this section. The determination may take into account requirements under a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or Tribal authority.

(i) For purposes of determining the applicability of a storage vessel tank battery as an affected facility, a legally and practicably enforceable limit must include the elements provided in paragraphs (e)(2)(i)(A) through (F) of this section.

(A) A quantitative production limit and quantitative operational limit(s) for the equipment, or quantitative operational limits for the equipment;

(B) An averaging time period for the production limit in (e)(2)(i)(A) of this section, if a production-based limit is used, that is equal to or less than 30 days;

(C) Established parametric limits for the production and/or operational limit(s) in paragraph (e)(2)(i)(A) of this section, 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;

(D) Ongoing monitoring of the parametric limits in (e)(2)(i)(C) of this section that demonstrates continuous compliance with the production and/or operational limit(s) in (e)(2)(i)(A) of this section;

(E) Recordkeeping by the owner or operator that demonstrates continuous compliance with the limit(s) in (e)(2)(i)(A) through (D) of this section; and

(F) Periodic reporting that demonstrates continuous compliance.

(ii) For each tank battery located at a well site or centralized production facility, you must determine the potential for VOC and methane emissions within 30 days after startup of production, or within 30 days after an action specified in paragraphs (e)(3)(i) and (ii) of this section, except as provided in paragraph (e)(5)(iv) of this section. The potential for VOC and methane emissions must be calculated using a generally accepted model or calculation methodology that accounts for flashing, working, and breathing losses, based on the maximum average daily throughput to the tank battery determined for a 30-day period of production.

(iii) For each tank battery not located at a well site or centralized production facility, including each tank battery located at a compressor station or onshore natural gas processing plant, you must determine the potential for VOC and methane emissions prior to startup of the compressor station, onshore natural gas processing plant, or other facility within 30 days after an action specified in paragraphs (e)(3)(i) and (ii) of this section, using either method described in paragraph (e)(2)(iii)(A) or (B) of this section.

(A) Determine the potential for VOC and methane emissions using a generally accepted model or calculation methodology that accounts for flashing, working and breathing losses and based on the throughput to the tank battery established in a legally and practicably enforceable limit in an operating permit or other requirement established under a Federal, state, local, or Tribal authority; or

(B) Determine the potential for VOC and methane emissions using a generally accepted model or calculation methodology that accounts for flashing, working and breathing losses and based on projected maximum average daily throughput. Maximum average daily throughput is determined using a generally accepted engineering model (*e.g.,* volumetric condensate rates from the tank battery based on the maximum gas throughput capacity of each producing facility) to project the maximum average daily throughput for the tank battery.

(3) For the purposes of § 60.5395b, the following definitions of ''reconstruction'' and ''modification'' apply for determining when an existing tank battery becomes a storage vessel affected facility under this subpart.

(i) ''Reconstruction'' of a tank battery occurs when the potential for VOC or methane emissions to meet or exceed either of the thresholds specified in paragraphs (e)(1)(i) or (ii) of this section and—

(A) At least half of the storage vessels are replaced in the existing tank battery that consists of more than one storage vessel; or

(B) The provisions of § 60.15 are met for the existing tank battery.

(ii) ''Modification'' of a tank battery occurs when any of the actions in paragraphs (e)(3)(ii)(A) through (D) of this section occurs and the potential for VOC or methane emissions meet or exceed either of the thresholds specified in paragraphs (e)(1)(i) or (ii) of this section.

(A) A storage vessel is added to an existing tank battery;

(B) One or more storage vessels are replaced such that the cumulative storage capacity of the existing tank battery increases;

(C) For tank batteries at well sites or centralized production facilities, an existing tank battery receives additional crude oil, condensate, intermediate hydrocarbons, or produced water throughput from actions, including but not limited to, the addition of operations or a production well, or changes to operations or a production well (including hydraulic fracturing or refracturing of the well).

(D) For tank batteries not located at a well site or centralized production facility, including each tank battery at compressor stations or onshore natural gas processing plants, an existing tank battery receives additional fluids which cumulatively exceed the throughput used in the most recent (*i.e.,* prior to an action in paragraphs (e)(3)(ii)(A), (B) or (D) of this section) determination of the potential for VOC or methane emissions.

(4) A storage vessel affected facility that subsequently has its potential for VOC emissions decrease to less than 6 tpy shall remain an affected facility under this subpart.

(5) For storage vessels not subject to a legally and practicably enforceable limit in an operating permit or other requirement established under Federal, state, local, or Tribal authority, any vapor from the storage vessel that is recovered and routed to a process through a vapor recovery unit designed and operated as specified in this section is not required to be included in the determination of potential for VOC or methane emissions for purposes of determining affected facility status, provided you comply with the requirements of paragraphs (e)(5)(i) through (iv) of this section.

(i) You meet the cover requirements specified in § 60.5411b(b).

(ii) You meet the closed vent system requirements specified in § 60.5411b(a)(2) through (4) and (c).

(iii) You must maintain records that document compliance with paragraphs (e)(5)(i) and (ii) of this section.

(iv) In the event of removal of apparatus that recovers and routes vapor to a process, or operation that is inconsistent with the conditions specified in paragraphs (e)(5)(i) and (ii) of this section, you must determine the storage vessel's potential for VOC emissions according to this section within 30 days of such removal or operation.

(6) The requirements of this paragraph (e)(6) apply to each storage vessel affected facility immediately upon startup, startup of production, or return to service. A storage vessel affected facility or portion of a storage vessel affected facility that is reconnected to the original source of liquids remains a storage vessel affected facility subject to the same requirements that applied before being removed from service. Any storage vessel that is used to replace a storage vessel affected facility, or portion of a storage vessel affected facility, or used to expand a storage vessel affected facility assumes the affected facility status of the storage vessel affected facility being replaced or expanded.

(7) A storage vessel with a capacity greater than 100,000 gallons used to recycle water that has been passed through two stage separation is not a storage vessel affected facility.

* * * * *

(g) Each sweetening unit affected facility as defined by paragraphs (g)(1) and (2) of this section.

(1) Each sweetening unit that processes natural gas produced from either onshore or offshore wells is an affected facility; and

(2) Each sweetening unit that processes natural gas followed by a sulfur recovery unit is an affected facility.

(3) Facilities that have a design capacity less than 2 long tons per day (LT/D) of hydrogen sulfide (H2S) in the acid gas (expressed as sulfur) are required to comply with recordkeeping and reporting requirements specified in § 60.5423b(e) but are not required to comply with §§ 60.5405b through 60.5407b and §§ 60.5410b(i) and 60.5415b(k).

(4) Sweetening facilities producing acid gas that is completely re-injected into oil-or-gas-bearing geologic strata or that is otherwise not released to the atmosphere are not subject to §§ 60.5405b through 60.5407b, 60.5410b(i), 60.5415b(k), and 60.5423b.

(h) Each pump affected facility, which is the collection of natural gas-driven pumps at a well site, centralized production facility, onshore natural gas processing plant, or a compressor station. Pumps that are not driven by natural gas are not included in the pump affected facility.

(1) For the purposes of § 60.5393b, in addition to the definition in § 60.14, a modification occurs when the number of natural gas-driven pumps in the affected facility is increased by one or more.

(2) For the purposes of § 60.5393b, owners and operators may choose to apply reconstruction as defined in § 60.15(b) based on the fixed capital cost of the new pumps in accordance with paragraph (h)(2)(i) of this section, or the definition of reconstruction based on the number of natural gas-driven pumps in the affected facility in accordance with paragraph (h)(2)(ii) of this section. Owners and operators may choose which definition of reconstruction to apply and whether to comply with paragraph (h)(2)(i) or (ii) of this section; they do not need to apply both. If owners and operators choose to comply with paragraph (h)(2)(ii) of this section they may demonstrate compliance with § 60.15(b)(1) by showing that more than 50 percent of the number of natural gas-driven pumps is replaced. That is, if an owner or operator meets the definition of reconstruction through the ''number of pumps'' criterion in paragraph (h)(2)(ii) of this section, they will have shown that the ''fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility,'' as required in § 60.15(b)(1). Therefore, an owner or operator may comply with the remaining provisions of § 60.15 that reference ''fixed capital cost'' through an initial showing that the number of natural gas-driven pumps replaced exceeds 50 percent. For purposes of paragraphs (h)(2)(i) and (ii) of this section, ''commenced'' means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of natural gas-driven pump replacement.

(i) If the owner or operator applies the definition of reconstruction in § 60.15, reconstruction occurs when the fixed capital cost of the new pumps exceeds 50 percent of the fixed capital cost that would be required to replace all the natural gas-driven pumps in the affected facility. The ''fixed capital cost of the new pumps'' includes the fixed capital cost of all natural gas-driven pumps which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 24-month rolling period following December 6, 2022.

(ii) If the owner or operator applies the definition of reconstruction based on the percentage of natural gas-driven pumps replaced, reconstruction occurs when greater than 50 percent of the natural gas-driven pumps in the affected facility are replaced. The percentage includes all natural gas-driven pumps which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 24-month rolling period following December 6, 2022. If an owner or operator determines reconstruction based on the percentage of natural gas-driven pumps that are replaced, the owner or operator must comply with § 60.15(a).

(3) A natural gas-driven pump that is in operation less than 90 days per calendar year is not part of an affected facility under this subpart. For the purposes of this section, any period of operation during a calendar day counts toward the 90-calendar day threshold.

(i) Each fugitive emissions components affected facility, which is the collection of fugitive emissions components at a well site, centralized production facility, or a compressor station.

(1) For purposes of § 60.5397b and § 60.5398b, a ''modification'' to a well site occurs when:

(i) A new well is drilled at an existing well site;

(ii) A well at an existing well site is hydraulically fractured; or

(iii) A well at an existing well site is hydraulically refractured.

(2) For purposes of § 60.5397b and § 60.5398b, a ''modification'' to centralized production facility occurs when:

(i) Any of the actions in paragraphs (i)(1)(i) through (iii) of this section occurs at an existing centralized production facility;

(ii) A well sending production to an existing centralized production facility is modified, as defined in paragraphs (i)(1)(i) through (iii) of this section; or

(iii) A well site subject to the requirements of § 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.

(3) For purposes of §§ 60.5397b and 60.5398b, a ''modification'' to a compressor station occurs when:

(i) An additional compressor is installed at a compressor station; or

(ii) One or more compressors at a compressor station is replaced by one or more compressors of greater total horsepower than the compressor(s) being replaced. When one or more compressors is replaced by one or more compressors of an equal or smaller total horsepower than the compressor(s) being replaced, installation of the replacement compressor(s) does not trigger a modification of the compressor station for purposes of §§ 60.5397b and 60.5398b.

■ 6. Amend § 60.5370b by revising paragraph (a)(1) introductory text, (a)(1)(i), (a)(4), and (a)(7)(i) to read as follows:

§ 60.5370b When must I comply with this subpart?

(a) * * *

(1) You must comply with the requirements of § 60.5385b for your reciprocating compressor affected facility as specified in paragraph (a)(1)(i), (ii), or (iii) of this section, as applicable.

(i) You must comply with the requirements of § 60.5385b(a)(1) on or before 8,760 hours of operation after May 7, 2024, on or before 8,760 hours of operation after last rod packing replacement, or on or before 8,760 hours of operation after startup, whichever date is later; and

* * * * *

(4) You must comply with the requirements of § 60.5400b or as an alternative, the requirements in § 60.5401b, for all process unit equipment affected facilities at a natural gas processing plant, as soon as practicable but no later than 180 days after the initial startup of the process unit.

* * * * *

(7) * * *

(i) You must comply with the requirements of § 60.5380b(a)(1) and (2) or (a)(3) for your centrifugal compressor upon initial startup.

* * * * *

■ 7. Amend § 60.5371b by revising and republishing paragraphs (c)(4), (d)(2) introductory text, and (e)(1)(v) to read as follows:

§ 60.5371b What GHG and VOC standards apply to super-emitter events?

* * * * *

(c) * * *

(4) Owner(s) or operator(s) of any oil and natural gas facility (*e.g.,* individual well site, centralized production facility, natural gas processing plant, or compressor station) within 50 meters of the latitude and longitude coordinates of the super-emitter event, if available.

* * * * *

(d) * * *

(2) If you own or operate an oil and natural gas facility within 50 meters from the latitude and longitude provided in the notification, you must investigate to determine the source of super-emitter event. The investigation may include but is not limited to the actions specified below in paragraphs (d)(2)(i) through (v) of this section.

* * * * *

(e) * * *

(1) * * *

(v) Indication of whether you were able to identify the source of the super-emitter event. If you indicate you were unable to identify the source of the super-emitter event, you must certify that all applicable investigations specified in paragraphs (d)(2)(i) through (v) of this section have been conducted for all affected facilities and associated equipment subject to this subpart that are at this oil and natural gas facility, and you have determined that the affected facilities and associated equipment are not the source of the super-emitter event. If you indicate that you were not able to identify the source of the super-emitter event, you are not required to report the information in paragraphs (e)(1)(vi) through (viii) of this section.

* * * * *

■ 8. Amend § 60.5376b by:

■ a. Revising and republishing paragraphs (a)(1) introductory text;

■ b. Redesignating paragraphs (a)(1)(A) and (B) as paragraphs (a)(1)(i) and (ii); and

■ c. Revising paragraph (g)(4).

The revisions read as follows:

§ 60.5376b What GHG and VOC standards apply to gas well liquids unloading operations at well affected facilities?

(a) * * *

(1) If a gas well liquids unloading operation technology or technique employed does not result in venting of methane and VOC emissions to the atmosphere, you must comply with the requirements specified in paragraphs (a)(1)(i) and (ii) and (d) and (e) of this section. If an unplanned venting event occurs, you must meet the requirements specified in paragraphs (c) through (f) of this section.

* * * * *

(g) * * *

(4) You must demonstrate continuous compliance with standards that apply to well affected facility gas well liquids unloading as required by § 60.5415b(b).

* * * * *

■ 9. Amend § 60.5377b by revising paragraph (g)(2) to read as follows:

§ 60.5377b What GHG and VOC standards apply to associated gas wells at well affected facilities?

* * * * *

(g) * * *

(2) This demonstration must be certified by a professional engineer or another qualified individual with expertise in the uses of associated gas. The following certification, signed and dated by the qualified professional engineer or other qualified individual shall state: ''I certify that the assessment of technical and safety infeasibility was prepared under my direction or supervision. I further certify that the assessment was conducted, and this report was prepared pursuant to the requirements of § 60.5377b(b). Based on my professional knowledge and experience, and inquiry of personnel involved in the assessment, the certification submitted herein is true, accurate, and complete.''

* * * * *

■ 10. Amend § 60.5380b by revising paragraph (a)(5) introductory text to read as follows:

§ 60.5380b What GHG and VOC standards apply to centrifugal compressor affected facilities?

* * * * *

(a) * * *

(5) If you own or operate a centrifugal compressor on the Alaska North Slope equipped with sour seal oil separator and capture system, you may comply with the GHG and VOC requirements specified in paragraphs (a)(5)(i) through (iii) of this section using volumetric flow rate as a surrogate, in lieu of meeting the requirements specified in paragraphs (a)(1) and (2) of this section. You must determine the volumetric flow rate in accordance with paragraph (a)(7)(ii) of this section.

* * * * *

■ 11. Amend § 60.5385b by revising and republishing paragraphs (a)(3) introductory text, (d)(3), and (g) to read as follows:

§ 60.5385b What GHG and VOC standards apply to reciprocating compressor affected facilities?

* * * * *

(a) * * *

(3) The rod packing must be repaired or replaced within 90 calendar days after the date of the volumetric emissions measurement that exceeded 2 scfm per cylinder. You must conduct

follow-up volumetric flow rate measurements from compressor vents using the methods specified in paragraph (b) or (c) of this section within 15 days after the repair (or rod packing replacement) to document that the rate has been reduced to less than 2 scfm per cylinder. Delay of repair will be allowed if the conditions in paragraph (a)(3)(i) or (ii) of this section are met.

* * * * *

(d) * * *

(3) As an alternative to conducting the required volumetric flow rate measurements under paragraph (a) of this section, an owner or operator can choose to comply by replacing the rod packing on or before 8,760 hours of operation after startup, on or before 8,760 hours of operation after May 7, 2024, on or before 8,760 hours of operation after the previous flow rate measurement, or on or before 8,760 hours of operation after the date of the most recent compressor rod packing replacement, whichever date is later.

* * * * *

(g) You must perform the reporting requirements as specified in § 60.5420b(b)(1), (6), and (11) through (13), as applicable; and the recordkeeping requirements as specified in § 60.5420b(c)(5) and (8) through (13), as applicable.

■ 12. Amend § 60.5386b by revising paragraphs (a)(1) introductory text and (c) introductory text to read as follows:

§ 60.5386b What test methods and procedures must I use for my centrifugal compressor and reciprocating compressor affected facilities?

* * * * *

(a) * * *

(1) *OGI instrument.* Use an OGI instrument for equipment leak detection as specified in either paragraph (a)(1)(i) or (ii) of this section. For the purposes of paragraphs (a)(1)(i) and (ii) of this section, any visible emissions observed by the OGI instrument from reciprocating rod packing or compressor dry or wet seal vent is a leak.

* * * * *

(c) You must use a high-volume sampler to measure emissions of the reciprocating compressor rod packing, applicable centrifugal compressor wet seal vent, or centrifugal compressor dry seal vent in accordance with paragraphs (c)(1) through (7) of this section.

* * * * *

■ 13. Amend § 60.5393b by revising paragraphs (b)(6)(ii) and (b)(7)(iii) to read as follows:

§ 60.5393b What GHG and VOC standards apply to pump affected facilities?

* * * * *

(b) * * *

(6) * * *

(ii) You must maintain the records in § 60.5420b(c)(15)(ii) through (iv), as applicable. You are no longer required to maintain the records in § 60.5420b(c)(15)(v) certifying that there is no vapor recovery unit or control device on site.

(7) * * *

(iii) The following certification, signed and dated by the qualified professional engineer or in-house engineer, must state: ''I certify that the assessment of technical infeasibility was prepared under my direction or supervision. I further certify that the assessment was conducted and this report was prepared pursuant to the requirements of § 60.5393b(b)(7)(ii). Based on my professional knowledge and experience, and inquiry of personnel involved in the assessment, the certification submitted herein is true, accurate, and complete.''

* * * * *

■ 14. Amend § 60.5395b by revising paragraphs (c)(1)(ii), (c)(2)(iii), and (c)(4) to read as follows:

§ 60.5395b What GHG and VOC standards apply to storage vessel affected facilities?

* * * * *

(c) * * *

(1) * * *

(ii) You must submit a notification as required in § 60.5420b(b)(8)(vii) in your next annual report, identifying each storage vessel affected facility removed from service during the reporting period and the date of its removal from service.

(2) * * *

(iii) You must submit a notification as required in § 60.5420b(b)(8)(vii) in your next annual report, identifying each storage vessel removed from service during the reporting period, the impacted storage vessel affected facility, and the date of its removal from service.

* * * * *

(4) For each storage vessel affected facility or portion of a storage vessel affected facility returned to service during the reporting period, you must submit a notification in your next annual report as required in § 60.5420b(b)(8)(viii), identifying each storage vessel affected facility or portion of a storage vessel affected facility and the date of its return to service.

* * * * *

■ 15. Amend § 60.5397b by revising paragraphs (d) introductory text and (k) to read as follows:

§ 60.5397b What GHG and VOC standards apply to fugitive emissions components affected facilities?

* * * * *

(d) *Additional elements of fugitive emissions monitoring plan.* Each fugitive emissions monitoring plan must include the elements specified in paragraphs (d)(1) and (2) of this section, at a minimum, as applicable.

* * * * *

(k) *Reporting and recordkeeping.* You must comply with the reporting requirements as specified in § 60.5420b(b)(1) and (9), and the recordkeeping requirements as specified in § 60.5420b(c)(14).

* * * * *

■ 16. Amend § 60.5398b by revising paragraphs (b)(5)(ii)(A), (b)(5)(iii)(A), (b)(5)(iv)(A), (d)(3)(iii)(A), and (d)(3)(vi) introductory text to read as follows:

§ 60.5398b What alternative GHG and VOC standards apply to fugitive emissions components affected facilities and what inspection and monitoring requirements apply to covers and closed vent systems when using an alternative technology?

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) You must conduct a monitoring survey of all the fugitive emissions components in an affected facility using either OGI or EPA Method 21 to appendix A–7 of this part. You must follow the procedures in your monitoring plan when conducting the survey.

* * * * *

(iii) * * *

(A) You must conduct a monitoring survey of all your fugitive emissions components located within a 4-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of this part. You must follow the procedures in your monitoring plan when conducting the survey.

* * * * *

(iv) * * *

(A) You must conduct a monitoring survey of all the fugitive emissions components located within a 1-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of this part. You must follow the procedures in your monitoring plan when conducting the survey.

* * * * *

(d) * * *

(3) * * *

(iii) * * *

(A) Description of scientific theory and appropriate references outlining the underlying technology (*e.g.,* reference material, literature review).

* * * * *

(vi) Supporting information verifying that the technology meets the aggregate detection threshold(s) defined in paragraphs (b) and/or (c) of this section or in § 60.5371b, including supporting data to demonstrate the aggregate detection threshold of the measurement technology as applied in the field and if applicable, how probability of detection is determined. For the purpose of this subpart the average aggregate detection threshold is the average of all site-level detection thresholds from a single deployment (*e.g.,* a singular flight that surveys multiple well sites, centralized production facility, and/or compressor stations) of a technology, unless this technology is to be applied to § 60.5371b. When the technology is applied to § 60.5371b, then the aggregate detection threshold is the average of all site-level detection thresholds from a single deployment in the same basin and field. At a minimum, you must provide the information identified in paragraphs (d)(3)(vi)(A) through (D) of this section.

* * * * *

■ 17. Amend § 60.5400b by revising paragraphs (c)(1), (k), and (l) to read as follows:

§ 60.5400b What GHG and VOC standards apply to process unit equipment affected facilities?

* * * * *

(c) * * *

(1) Monitor the pump within 5 calendar days using OGI in accordance with Appendix K or the methods specified in § 60.5403b. A leak is detected if any emissions are observed using OGI or if an instrument reading of 2,000 ppmv or greater is provided using Method 21 of appendix A–7 to this part.

* * * * *

(k) *Reporting.* You must perform the reporting requirements as specified in § 60.5420b(b)(1) and (11) through (13), as applicable, and § 60.5422b.

(l) *Recordkeeping.* You must perform the recordkeeping requirements as specified in § 60.5420b(c)(8) and (10) through (13), as applicable, and § 60.5421b.

■ 18. Amend § 60.5401b by revising and republishing paragraphs (b), (c), (f), (h), (i), (l), and (m) to read as follows:

§ 60.5401b What are the alternative GHG and VOC standards for process unit equipment affected facilities?

* * * * *

(b) *Pumps in light liquid service.* You must monitor each pump in light liquid service monthly to detect leaks by the methods specified in § 60.5403b, except as provided in paragraphs (b)(2) through (6) of this section. A leak is defined as an instrument reading of 2,000 ppmv or greater. A pump that begins operation in light liquid service after the initial startup date for the process unit must be monitored for the first time within 30 days after the end of its startup period, except for a pump that replaces a leaking pump and except as provided in paragraphs (b)(2) through (6) of this section.

(1) In addition to the requirements in paragraph (b) of this section, you must conduct weekly visual inspections of all pumps in light liquid service for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, you must follow the procedure specified in either paragraph (b)(1)(i) or (ii) of this section.

(i) Monitor the pump within 5 days using the methods specified in § 60.5403b. A leak is defined as an instrument reading of 2,000 ppmv or greater.

(ii) Designate the visual indications of liquids dripping as a leak, and repair the leak as specified in paragraph (i) of this section.

(2) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements in paragraph (b) of this section, provided the requirements specified in paragraphs (b)(2)(i) through (v) of this section are met.

(i) Each dual mechanical seal system meets the requirements of paragraphs (b)(2)(i)(A), (B), or (C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of paragraph (e) of this section; or

(C) Equipped with a system that purges the barrier fluid into a process stream with zero VOC emissions to the atmosphere.

(ii) The barrier fluid system is in heavy liquid service or does not have the potential to emit methane or VOC.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each pump is checked according to the requirements in paragraph (b)(1) of this section.

(v) Each sensor meets the requirements in paragraphs (b)(2)(v)(A) through (C) of this section.

(A) Each sensor as described in paragraph (b)(2)(iii) of this section is checked daily or is equipped with an audible alarm.

(B) You determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(C) If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion established in paragraph (b)(2)(v)(B) of this section, a leak is detected.

(3) Any pump that is designated, as described in § 60.5421b(b)(12), for no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, is exempt from the requirements of paragraphs (b) introductory text, (b)(1), and (2) of this section if the pump:

(i) Has no externally actuated shaft penetrating the pump housing;

(ii) Is demonstrated to be operating with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background as measured by the methods specified in § 60.5403b; and

(iii) Is tested for compliance with paragraph (b)(3)(ii) of this section initially upon designation, annually, and at other times requested by the Administrator.

(4) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a process, fuel gas system, or a control device that complies with the requirements of paragraph (e) of this section, it is exempt from paragraphs (b), (b)(1) through (3) of this section, and the repair requirements of paragraph (i) of this section.

(5) Any pump that is designated, as described in § 60.5421b(b)(13), as an unsafe-to-monitor pump is exempt from the inspection and monitoring requirements of paragraphs (b) introductory text, (b)(1), and (b)(2)(iv) and (v) of this section if the conditions in paragraphs (b)(5)(i) and (ii) of this section are met.

(i) You demonstrate that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (b) of this section; and

(ii) You have a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and you repair the equipment according to the procedures in paragraph (i) of this section if a leak is detected.

(6) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirements in paragraph (b)(1) and (b)(2)(iv) of this section, and the daily requirements of paragraph (b)(2)(v) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

(c) *Pressure relief devices in gas/vapor service.* You must monitor each pressure relief device quarterly using the methods specified in § 60.5403b. A leak is defined as an instrument reading of 500 ppmv or greater above background.

(1) In addition to the requirements in paragraph (c) introductory text of this section, after each pressure release, you must monitor each pressure relief device within 5 calendar days after each pressure release to detect leaks. A leak is detected if an instrument reading of 500 ppmv or greater is provided using the methods specified in § 60.5403b(b).

(2) Any pressure relief device that is located in a nonfractionating plant that is monitored only by non-plant personnel may be monitored after a pressure release the next time the monitoring personnel are onsite or within 30 calendar days after a pressure release, whichever is sooner, instead of within 5 calendar days as specified in paragraph (c)(1) of this section.

(3) No pressure relief device described in paragraph (c)(2) of this section may be allowed to operate for more than 30 calendar days after a pressure release without monitoring.

(4) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in paragraph (e) of this section is exempt from the requirements of paragraph (c) introductory text and (c)(1) of this section.

(5) Pressure relief devices equipped with a rupture disk are exempt from the requirements of paragraphs (c)(1) and (2) of this section provided you install a new rupture disk upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in paragraph (i)(6) of this section.

* * * * *

(f) *Valves in gas/vapor and light liquid service.* You must monitor each valve in gas/vapor and in light liquid service quarterly to detect leaks by the methods specified in § 60.5403b, except as provided in paragraphs (f)(3) through (5) of this section.

(1) A valve that begins operation in gas/vapor service or in light liquid service after the initial startup date for the process unit must be monitored for the first time within 90 days after the end of its startup period to ensure proper installation, except for a valve that replaces a leaking valve and except as provided in paragraphs (f)(3) through (5) of this section.

(2) An instrument reading of 500 ppmv or greater is a leak. You must repair each leaking valve according to the requirements in paragraph (i) of this section.

(3) Any valve that is designated, as described in § 60.5421b(b)(12), for no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, is exempt from the monitoring requirements of paragraph (f) of this section if the valve:

(i) Has no externally actuating mechanism in contact with the process fluid;

(ii) Is operated with emissions less than 500 ppmv above background as determined by the methods specified in § 60.5403b; and

(iii) Is tested for compliance with paragraph (f)(3)(ii) of this section initially upon designation, annually, and at other times requested by the Administrator.

(4) Any valve that is designated, as described in § 60.5421b(b)(13), as an unsafe-to-monitor valve is exempt from the monitoring requirements of paragraph (f) of this section if the requirements in paragraphs (f)(4)(i) and (ii) of this section are met.

(i) You demonstrate that the valve is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (f) of this section; and

(ii) You have a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and you repair the equipment according to the procedures in paragraph (i) of this section if a leak is detected.

(5) Any valve that is designated, as described in § 60.5421b(b)(14), as a difficult-to-monitor valve is exempt from the monitoring requirements of paragraph (f) of this section if the requirements in paragraph (f)(5)(i) through (iii) of this section are met.

(i) You demonstrate that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(ii) The process unit within which the valve is located has less than 3.0 percent of its total number of valves designated as difficult-to-monitor.

(iii) You have a written plan that requires monitoring of the at least once per calendar year.

* * * * *

(h) *Connectors in gas/vapor service and in light liquid service.* You must initially monitor all connectors in the process unit for leaks by the later of either 12 months after the compliance date or 12 months after initial startup. If all connectors in the process unit have been monitored for leaks prior to the compliance date, no initial monitoring is required provided either no process changes have been made since the monitoring or the owner or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, you are required to monitor only those connectors involved in the process change.

(1) You must monitor all connectors in gas/vapor service and all connectors in light liquid service annually, except as provided in § 60.5399b, paragraph (e) of this section or paragraph (h)(2) of this section. If an instrument reading greater than or equal to 500 ppmv is measured, a leak is detected.

(2) Any connector that is designated, as described in § 60.5421b(b)(13), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (h) introductory text and (h)(1) of this section if the requirements of paragraphs (h)(2)(i) and (ii) of this section are met.

(i) You demonstrate the connector is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (h) introductory text and (h)(1) of this section; and

(ii) You have a written plan that requires monitoring of the connector as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and you repair the equipment according to the procedures in paragraph (i) of this section if a leak is detected.

(3) Inaccessible, ceramic, or ceramic-line connectors.

(i) Any connector that is inaccessible or that is ceramic or ceramic-lined (*e.g.,* porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (h) and (h)(1) of this section, from the leak repair requirements of paragraph (i) of this section, and from the recordkeeping and reporting requirements of §§ 60.5421b and 60.5422b. An inaccessible connector is one that meets any of the specifications in paragraphs (h)(3)(i)(A) through (F) of this section, as applicable.

(A) Buried.

(B) Insulated in a manner that prevents access to the connector by a monitor probe.

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe.

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground.

(E) Inaccessible because it would require elevating monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold.

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines or would risk damage to equipment.

(ii) If any inaccessible, ceramic, or ceramic-lined connector is observed by AVO or other means to be leaking, the indications of a leak to the atmosphere by AVO or other means must be eliminated as soon as practicable.

(4) Connectors which are part of an instrumentation systems and inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of paragraph (h)(3) of this section, are not subject to the recordkeeping requirements of § 60.5421b(b)(1).

(i) *Repair requirements.* When a leak is detected, comply with the requirements of paragraphs (i)(1) through (5) of this section, except as provided in paragraph (i)(6) of this section.

(1) A weatherproof and readily visible identification tag, marked with the equipment identification number, must be attached to the leaking equipment. The identification tag on the equipment may be removed after it has been repaired.

(2) A first attempt at repair must be made as soon as practicable, but no later than 5 calendar days after the leak is detected.

(i) First attempts at repair for pumps in light liquid or heavy liquid service include, but are not limited to, the practices described in paragraphs (i)(2)(i)(A) and (B) of this section, where practicable.

(A) Tightening the packing gland nuts.

(B) Ensuring that the seal flush is operating at design pressure and temperature.

(ii) For each valve where a leak is detected, you must comply with paragraph (i)(2)(ii)(A), (B), or (C) of this section, unless you meet the requirements of paragraph (i)(2)(ii)(D) of this section.

(A) Repack the existing valve with a low-e packing.

(B) Replace the existing valve with a low-e valve; or

(C) Perform a drill and tap repair with a low-e injectable packing.

(D) An owner or operator is not required to utilize a low-e valve or low-e packing to replace or repack a valve if the owner or operator demonstrates that a low-e valve or low-e packing is not technically feasible. Low-e valve or low-e packing that is not suitable for its intended use is considered to be technically infeasible. Factors that may be considered in determining technical infeasibility include: retrofit requirements for installation (*e.g.,* re-piping or space limitation), commercial unavailability for valve type, or certain instrumentation assemblies.

(3) Repair of leaking equipment must be completed within 15 calendar days after detection of each leak, except as provided in paragraph (i)(4), (5), or (6) of this section.

(4) If the repair for visual indications of liquids dripping for pumps in light liquid service can be made by eliminating visual indications of liquids dripping, you must make the repair within 5 calendar days of detection.

(5) If the repair for AVO or other indication of a leak for open-ended lines or valves; pumps, valves, or connectors in heavy liquid service; or pressure relief devices in light liquid or heavy liquid service can be made by eliminating the AVO, or other indication of a potential leak, you must make the repair within 5 calendar days of detection.

(6) Delay of repair of equipment for which leaks have been detected will be allowed if repair within 15 calendar days is technically infeasible without a process unit shutdown or as specified in paragraphs (i)(6)(i) through (v) of this section. Repair of this equipment shall occur before the end of the next process unit shutdown. Monitoring to verify repair must occur within 15 calendar days after startup of the process unit.

(i) Delay of repair of equipment will be allowed for equipment which is isolated from the process, and which does not have the potential to emit methane or VOC.

(ii) Delay of repair for valves and connectors will be allowed if the conditions in paragraphs (i)(6)(ii)(A) and (B) are met.

(A) You demonstrate that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(B) When repair procedures are conducted, the purged material is collected and destroyed or recovered in a control device complying with paragraph (e) of this section.

(iii) Delay of repair for pumps will be allowed if the conditions in paragraphs (i)(6)(iii)(A) and (B) are met.

(A) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system, and

(B) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(iv) If delay of repair is required to repack or replace the valve, you may use delay of repair. Delay of repair beyond a process unit shutdown will be allowed for a valve, if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

(v) When delay of repair is allowed for a leaking pump, valve, or connector that remains in service, the pump, valve, or connector may be considered to be repaired and no longer subject to delay of repair requirements if two consecutive monthly monitoring results show no leak remains.

* * * * *

(l) *Reporting.* You must perform the reporting requirements as specified in § 60.5420b(b)(1) and (11) through (13), as applicable, and § 60.5422b.

(m) *Recordkeeping.* You must perform the recordkeeping requirements as specified in § 60.5420b(c)(8) and (10) through (13), as applicable, and § 60.5421b.

■ 19. Amend § 60.5402b by revising paragraph (d) introductory text to read as follows:

§ 60.5402b What are the exceptions to the GHG and VOC standards for process unit equipment affected facilities?

* * * * *

(d) You may use the following provisions instead of § 60.5403b(d):

* * * * *

■ 20. Amend § 60.5403b by revising paragraph (c) introductory text to read as follows:

§ 60.5403b What test methods and procedures must I use for my process unit equipment affected facilities?

* * * * *

(c) You shall determine compliance with the no detectable emission standards in § 60.5401b(b) and (f) as specified in paragraphs (c)(1) and (2) of this section.

* * * * *

§ 60.5406b [Amended]

■ 21. Amend § 60.5406b by redesignating the second paragraph (c)(4)(iv) as paragraph (c)(4)(vi).

■ 22. Amend § 60.5407b by revising paragraph (b)(4) to read as follows:

§ 60.5407b What are the requirements for monitoring of emissions and operations from my sweetening unit affected facilities?

* * * * *

(b) * * *

(4) Upon promulgation of a performance specification of continuous monitoring systems for total reduced sulfur compounds at sulfur recovery plants, you may, as an alternative to paragraph (b)(2) of this section, install, calibrate, maintain, and operate a continuous emission monitoring system for total reduced sulfur compounds as required in paragraph (c) of this section in addition to a sulfur dioxide emission monitoring system. The sum of the equivalent sulfur mass emission rates from the two monitoring systems must be used to compute the total sulfur emission rate (E).

* * * * *

■ 23. Amend § 60.5410b by revising and republishing paragraphs (b)(4) introductory text, (c), (d)(2) and (6), (e)(3), (f) introductory text, (f)(2) introductory text, (g), and (h)(12) to read as follows:

§ 60.5410b How do I demonstrate initial compliance with the standards for each of my affected facilities?

* * * * *

(b) * * *

(4) If you comply by using § 60.5376b(g), you must comply with paragraphs (b)(4)(i) through (vi) of this section.

* * * * *

(c) *Associated gas well standards for well affected facility.* To demonstrate initial compliance with the GHG and VOC standards for each associated gas well as required by § 60.5377b, you must comply with paragraphs (c)(1) through (4) of this section.

(1) If you comply with the requirements of § 60.5377b(a), you must maintain the records specified in § 60.5420b(c)(3)(i), (ii), and (iv).

(2) For associated gas wells that comply with § 60.5377b(f) based on a demonstration and certification that it is not feasible to comply with paragraphs (a)(1), (2), (3), and (4) of this section due to technical reasons in accordance with paragraph § 60.5377b(g), you must comply with paragraphs (c)(2)(i) and (ii) of this section.

(i) Document the technical reasons why it is infeasible to route recovered associated gas into a gas gathering flow line or collection system to a sales line, use it as an onsite fuel source, use it for another useful purpose that a purchased fuel or raw material would serve, or re-inject it into the well or inject it into another well, maintain the documentation in accordance with § 60.5377(g), and submit this documentation in the initial annual report as required by paragraph (c)(4) of this section.

(ii) Maintain a copy of the certification and submit the certification as required by § 60.5377b(g).

(3) If you comply with § 60.5377b(d) or (f), you must comply with paragraphs (c)(3)(i) through (vi) of this section.

(i) Reduce methane and VOC emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413b.

(ii) Install a closed vent system that meets the requirements of § 60.5411b(a) and (c) to capture the associated gas and route the captured associated gas to a control device that meets the conditions specified in § 60.5412b.

(iii) Conduct an initial performance test as required in § 60.5413b within 180 days after initial startup or by May 7, 2024, whichever date is later, or install a control device tested under § 60.5413b(d) which meets the criteria in § 60.5413b(d)(11) and (e) and you must comply with the continuous compliance requirements of § 60.5415b(f).

(iv) Conduct the initial inspections required in § 60.5416b(a) and (b).

(v) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417b(a) through (i), as applicable.

(vi) Maintain the records specified in § 60.5420b(c)(3)(iv) and (c)(8) and (c)(10) through (13), as applicable.

(4) You must submit the initial annual report for your associated gas well as required in § 60.5420b(b)(1) and (4) and (b)(11) through (13), as applicable.

(d) * * *

(2) If you use a control device to reduce emissions to comply with § 60.5380b(a)(1) and (2), you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411b(b) that is connected through a closed vent system that meets the requirements of § 60.5411b(a) and (c) and is routed to a control device that meets the conditions specified in § 60.5412b. If you comply with § 60.5380b(a)(3) by routing the closed vent system to a process as an alternative to routing the closed vent system to a control device, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411b(b), and route captured vapors through a closed vent system to a process that meets the requirements of § 60.5411b(a) and (c).

* * * * *

(6) You must maintain the volumetric flow rates for your centrifugal compressors as specified in paragraphs (d)(6)(i) through (iii) of this section, as applicable.

(i) For your self-contained wet seal centrifugal compressors, you must maintain the volumetric flow rate at or below 3 scfm per seal. You must conduct your initial annual volumetric measurement as required by § 60.5380b(a)(4).

(ii) For your centrifugal compressor on the Alaska North Slope equipped with sour seal oil separator and capture system, you must maintain the volumetric flow rate at or below 9 scfm per seal. You must conduct your initial annual volumetric measurement as required by § 60.5380b(a)(5).

(iii) For your dry seal centrifugal compressor, you must maintain the volumetric flow rate at or below 10 scfm per seal. You must conduct your initial annual volumetric measurement as required by § 60.5380b(a)(6).

* * * * *

(e) * * *

(3) If you comply with § 60.5385b(d) by collecting the emissions from your rod packing emissions collection system by using a control device to reduce VOC and methane emissions by 95.0 percent as required by § 60.5385b(d)(2), you must equip the reciprocating compressor with a cover that meets the requirements of § 60.5411b(b), route emissions to a control device that meets the conditions specified in § 60.5412b through a closed vent system that meets the requirements of § 60.5411b(a) and

(c) and you must conduct the initial inspections required in § 60.5416b(a) and (b).

* * * * *

(f) *Process controller affected facility.* To demonstrate initial compliance with GHG and VOC emission standards for your process controller affected facility as required by § 60.5390b, you must comply with paragraphs (f)(1) through (5) of this section, as applicable. If you change compliance methods, you must also perform the applicable compliance demonstrations of paragraphs (f)(1) through (3) of this section again for the new compliance method, note the change in compliance method in the annual report required by § 60.5420b(b)(7)(iv), and maintain the records required by paragraph (f)(5) of this section for the new compliance method.

* * * * *

(2) For each process controller affected facility located at a site in Alaska that does not have access to electrical power, you must demonstrate initial compliance with § 60.5390b(b)(1) and (2) or with § 60.5390b(b)(3), instead of complying with paragraph § 60.5390b(a), by meeting the requirements specified in (f)(2)(i) through (iv) of this section for each process controller, as applicable.

* * * * *

(g) *Pump affected facility.* To demonstrate initial compliance with the GHG and VOC standards for your pump affected facility as required by § 60.5393b, you must comply with paragraphs (g)(1) through (4) of this section, as applicable. If you change compliance methods, you must also perform the applicable compliance demonstrations of paragraphs (g)(1) and (2) of this section again for the new compliance method, note the change in compliance method in the annual report required by § 60.5420b(b)(10)(v)(C), and maintain the records required by paragraph (g)(4) of this section for the new compliance method.

(1) For pump affected facilities complying with the requirements of § 60.5393b(a) or (b)(2) by routing emissions to a process, you must meet the requirements specified in paragraphs (g)(1)(ii) and (iv) of this section. For pump affected facilities complying with the requirements of § 60.5393b(b)(3), you must meet the requirements specified in paragraphs (g)(1)(i) through (v) of this section.

(i) Reduce methane and VOC emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413b.

(ii) Install a closed vent system that meets the requirements of § 60.5411b(a) and (c) to capture all emissions from all pumps in the pump affected facility and route all emissions to a process or control device that meets the conditions specified in § 60.5412b.

(iii) Conduct an initial performance test as required in § 60.5413b within 180 days after initial startup or by May 7, 2024, whichever date is later, or install a control device tested under § 60.5413b(d) which meets the criteria in § 60.5413b(d)(11) and (e) and you must comply with the continuous compliance requirements of § 60.5415b(f).

(iv) Conduct the initial inspections of the closed vent system and bypasses, if applicable, as required in § 60.5416b(a) and (b).

(v) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417b(a) through (i), as applicable.

(2) Submit the certifications specified in paragraphs (g)(2)(i) through (iii) of this section, as applicable.

(i) The certification required by § 60.5393b(b)(5) that there is no vapor recovery unit on site and that there is a control device on site, but it does not achieve a 95.0 percent emissions reduction.

(ii) The certification required by § 60.5393b(b)(6) that there is no control device or process available on site.

(iii) The certification required by § 60.5393b(b)(7) that it is technically infeasible to capture and route the pump affected facility emissions to a process or an existing control device.

(3) You must submit the initial annual report for your pump affected facility as specified in § 60.5420b(b)(1), (10), and (b)(11) through (13), as applicable.

(4) You must maintain the records for your pump affected facility as specified in § 60.5420b(c)(8) and (c)(10) through (13), as applicable, and (c)(15).

(h) * * *

(12) You must tag and repair each identified leak as required in § 60.5400b(h) or § 60.5401b(i), as applicable.

* * * * *

■ 24. Amend § 60.5411b by revising paragraph (b)(4) to read as follows:

§ 60.5411b What additional requirements must I meet to determine initial compliance for my covers and closed vent systems?

* * * * *

(b) * * *

(4) You must design and operate the cover with no identifiable emissions as demonstrated by § 60.5416b(a) and (b), except when operated as provided in paragraphs (b)(2)(i) through (iv) of this section.

* * * * *

■ 25. Amend § 60.5412b by revising paragraphs (a) introductory text, (c)(1)(i), and (d)(4) to read as follows:

§ 60.5412b What additional requirements must I meet for determining initial compliance of my control devices?

* * * * *

(a) Each control device used to meet the emissions reduction standard in § 60.5377b(d) or (f) for your associated gas well at a well affected facility; § 60.5376b(g) for your well affected facility gas well that unloads liquids; § 60.5380b(a)(1) or (9) for your centrifugal compressor affected facility; § 60.5385b(d)(2) for your reciprocating compressor affected facility; § 60.5395b(a)(2) for your storage vessel affected facility; § 60.5390b(b)(3) for your process controller affected facility in Alaska; § 60.5393b(b)(3) for your pumps affected facility; or either § 60.5400b(f) or § 60.5401b(e) for your process equipment affected facility must be installed according to paragraphs (a)(1) through (3) of this section. As an alternative to paragraph (a)(1) of this section, you may install a combustion control device model tested under § 60.5413b(d), which meets the criteria in § 60.5413b(d)(11) and which meets the initial and continuous compliance requirements in § 60.5413b(e).

* * * * *

(c) * * *

(1) * * *

(i) Following the initial startup of the control device, you must replace all carbon in the carbon adsorption system with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413b(c)(2) or (3). You must maintain records identifying the schedule for replacement and records of each carbon replacement as required in § 60.5420b(c)(11).

* * * * *

(d) * * *

(4) The alternative test method must be capable of documenting periods when the enclosed combustion device or flare operates with visible emissions. If the alternative test method cannot identify periods of visible emissions, you must conduct the inspections required by § 60.5417b(d)(8)(v).

* * * * *

■ 26. Amend § 60.5413b by revising the introductory text to read as follows:

§ 60.5413b What are the performance testing procedures for control devices?

This section applies to the performance testing of control devices

used to demonstrate compliance with the emissions standards for your well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment affected facilities. You must demonstrate that a control device achieves the performance requirements of § 60.5412b(a)(1) or (2) using the performance test methods and procedures specified in this section. For condensers and carbon adsorbers, you may use a design analysis as specified in paragraph (c) of this section in lieu of complying with paragraph (b) of this section. In addition, this section contains the requirements for enclosed combustion device performance tests conducted by the manufacturer applicable to well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment affected facilities.

* * * * *

■ 27. Amend § 60.5415b by revising and republishing paragraphs (d), (e), (f), (h), (i), (k), and (l) to read as follows:

§ 60.5415b How do I demonstrate continuous compliance with the standards for each of my affected facilities?

* * * * *

(d) *Centrifugal compressor affected facility.* For each wet seal centrifugal compressor affected facility complying with § 60.5380b(a)(1) and (2), or with § 60.5380b(a)(3) by routing emissions to a control device or to a process, you must demonstrate continuous compliance according to paragraph (d)(1) and paragraphs (d)(3) and (4) of this section. For each self-contained wet seal centrifugal compressor complying with the requirements in § 60.5380b(a)(4), you must demonstrate continuous compliance according to paragraphs (d)(2) through (4) of this section. For each centrifugal compressor on the Alaska North Slope equipped with sour seal oil separator and capture system, complying with the requirements of § 60.5380b(a)(5), you must demonstrate continuous compliance according to paragraphs (d)(2) through (4) of this section. For each dry seal centrifugal compressor complying with the requirements in § 60.5380b(a)(6), you must demonstrate continuous compliance according to paragraphs (d)(2) through (4) of this section.

(1) For each wet seal centrifugal compressor affected facility complying by routing emissions to a control device or to a process, you must operate the wet seal emissions collection system to route emissions to a control device or a process through a closed vent system and continuously comply with the cover and closed vent requirements of § 60.5416b. If you comply with § 60.5380b(a)(2) by using a control device, you also must comply with the requirements in paragraph (f) of this section.

(2) You must maintain volumetric flow rate at or below the flow rates specified in § 60.5380b(a)(4) for you self-contained centrifugal compressor, § 60.5380b(a)(5) for your Alaska North Slope centrifugal compressor equipped with a sour seal oil separator and capture system, and § 60.5380b(a)(6) for your centrifugal compressor equipped with dry seals, as applicable. You must conduct the required volumetric flow rate measurement of your self-contained wet seal centrifugal compressor in accordance with § 60.5380b(a)(4), your Alaska North Slope centrifugal compressor equipped with a sour seal oil separator and capture system in accordance with § 60.5380b(a)(5), and your dry seal centrifugal compressor in accordance with § 60.5380b(a)(6), as applicable, on or before 8,760 hours of operation after your last volumetric flow rate measurement which demonstrates compliance with the volumetric flow rate specified in § 60.5380b(a)(4) for your self-contained centrifugal compressor, § 60.5380b(a)(5) for your Alaska North Slope centrifugal compressor equipped with a sour seal oil separator and capture system and § 60.5380b(a)(6) for your centrifugal compressor equipped with dry seals, as applicable.

(3) You must submit the annual reports as required in § 60.5420b(b)(1), (5), and (11)(i) through (iv), as applicable.

(4) You must maintain records as required in § 60.5420b(c)(4), (8) through (10), and (12), as applicable.

(e) *Pump affected facility.* To demonstrate continuous compliance with the GHG and VOC standards for your pump affected facility as required by § 60.5393b, you must comply with paragraphs (e)(1) through (3) of this section.

(1) For pump affected facilities complying with the requirements of § 60.5393b(a) by routing emissions to a process, and for pump affected facilities complying with the requirements of § 60.5393b(b)(2), or (3), you must route emissions through a closed vent system and continuously comply with the closed vent requirements of § 60.5416b. If you comply with § 60.5393b(b)(3), you also must comply with the requirements in paragraph (f) of this section.

(2) You must submit the annual reports for your pump affected facility as required in § 60.5420b(b)(1), (10), and (11)(i) through (iv), as applicable.

(3) You must maintain the records for your pump affected facility as specified in § 60.5420b(c)(8), (10) through (12), and (15), as applicable.

(f) *Additional continuous compliance requirements for well, centrifugal compressor, reciprocating compressor, process controllers in Alaska, storage vessel, process unit equipment, or pump affected facilities.* For each associated gas well, each gas well that conducts liquids unloading, each centrifugal compressor affected facility, each reciprocating compressor affected facility, each process controller affected facility in Alaska, each storage vessel affected facility, each process unit equipment affected facility, and each pump affected facility referenced to this paragraph from either paragraph (b), (c), (d)(1), (e)(1), (g)(2), (h)(2), (i)(5)(ii)(B), or (j)(12) of this section, you must also install monitoring systems as specified in § 60.5417b, demonstrate continuous compliance according to paragraph (f)(1) of this section, maintain the records in paragraph (f)(2) of this section, and comply with the reporting requirements specified in paragraph (f)(3) of this section.

(1) You must demonstrate continuous compliance with the control device performance requirements of § 60.5412b(a) using the procedures specified in paragraphs (f)(1)(i) through (viii) of this section and conducting the monitoring as required by § 60.5417b. If you use a condenser as the control device to achieve the requirements specified in § 60.5412b(a)(2), you may demonstrate compliance according to paragraph (f)(1)(ix) of this section. You may switch between compliance with paragraphs (f)(1)(i) through (viii) of this section and compliance with paragraph (f)(1)(ix) of this section only after at least 1 year of operation in compliance with the selected approach. You must provide notification of such a change in the compliance method in the next annual report, following the change. If you use an enclosed combustion device or a flare as the control device, you must also conduct the monitoring required in paragraph (f)(1)(x) of this section. If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d), you must use the procedures in paragraph (f)(1)(xi) of this section in lieu of the procedures in paragraphs (f)(1)(i) through (viii) of this section, but you must still conduct the monitoring required in paragraph (f)(1)(x) of this section.

(i) You must operate below (or above) the site-specific maximum (or

minimum) parameter value established according to the requirements of § 60.5417b(f)(1). For flares, you must operate above the limits specified in paragraphs (f)(1)(vii)(B) of this section.

(ii) You must calculate the average of the applicable monitored parameter in accordance with § 60.5417b(e).

(iii) Compliance with the operating parameter limit is achieved when the average of the monitoring parameter value calculated under paragraph (f)(1)(ii) of this section is either equal to or greater than the minimum parameter value or equal to or less than the maximum parameter value established under paragraph (f)(1)(i) of this section. When performance testing of a combustion control device is conducted by the device manufacturer as specified in § 60.5413b(d), compliance with the operating parameter limit is achieved when the criteria in § 60.5413b(e) are met.

(iv) You must operate the continuous monitoring system required in § 60.5417b(a) at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities, including, as applicable, system accuracy audits and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(v) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other required data collection periods to assess the operation of the control device and associated control system.

(vi) Failure to collect required data is a deviation of the monitoring requirements.

(vii) If you use an enclosed combustion device to meet the requirements of § 60.5412b(a)(1) and you demonstrate compliance using the test procedures specified in § 60.5413b(b), or you use a flare designed and operated in accordance with § 60.5412b(a)(3), you must comply with the applicable requirements in paragraphs (f)(1)(vii)(A) through (E) of this section.

(A) For each enclosed combustion device which is not a catalytic vapor incinerator and for each flare, you must comply with the requirements in paragraphs (f)(1)(vii)(A)(*1*) through (*4*) of this section.

(*1*) A pilot or combustion flame must be present at all times of operation. An alert must be sent to the nearest control room whenever the pilot or combustion flame is unlit.

(*2*) Devices must be operated with no visible emissions, except for periods not to exceed a total of 1 minute during any 15-minute period. A visible emissions test conducted according to section 11 of Method 22 of appendix A–7 to this part, must be performed at least once every calendar month, separated by at least 15 days between each test. The observation period shall be 15 minutes or once the amount of time visible emissions is present has exceeded 1 minute, whichever time period is less. Alternatively, you may conduct visible emissions monitoring according to § 60.5417b(h).

(*3*) Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available for inspection.

(*4*) Following return to operation from maintenance or repair activity, each device must pass a Method 22 of appendix A–7 to this part visual observation as described in paragraph (f)(1)(vii)(A)(*2*) of this section or be monitored according to § 60.5417b(h).

(B) For flares, you must comply with the requirements in paragraphs (f)(1)(vii)(B)(*1*) through (*6*) of this section.

(*1*) For unassisted flares, maintain the NHV of the gas sent to the flare at or above 200 Btu/scf.

(*2*) If you use a pressure assisted flare, maintain the NHV of gas sent to the flare at or above 800 Btu/scf.

(*3*) For steam-assisted and air-assisted flares, maintain the NHV_{cz} at or above 270 Btu/scf.

(*4*) For flares with perimeter assist air, maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the flare is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are not required to comply with the NHV_{dil} limit.

(*5*) Unless you use a pressure-assisted flare, maintain the flare tip velocity below the applicable limits in § 60.18(b).

(6) Maintain the total gas flow to the flare above the minimum inlet gas flow rate. The minimum inlet gas flow rate is established based on manufacturer recommendations.

(C) For enclosed combustion devices for which, during the performance test conducted under § 60.5413b(b), the combustion zone temperature is not an indicator of destruction efficiency, you must comply with the requirements in paragraphs (f)(1)(vii)(C)(*1*) through (*5*) of this section, as applicable.

(*1*) Maintain the total gas flow to the enclosed combustion device at or above the minimum inlet gas flow rate and at or below the maximum inlet flow rate for the enclosed combustion device established in accordance with § 60.5417b(f).

(*2*) For unassisted enclosed combustion devices, maintain the NHV of the gas sent to the enclosed combustion device at or above 200 Btu/scf.

(*3*) For enclosed combustion devices that use pressure-assisted burner tips to promote mixing at the burner tip, maintain the NHV of the gas sent to the enclosed combustion device at or above 800 Btu/scf.

(*4*) For steam-assisted and air-assisted enclosed combustion devices, maintain the NHV_{cz} at or above 270 Btu/scf.

(*5*) For enclosed combustion devices with perimeter assist air, maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the enclosed combustion device is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are not required to comply with the NHV_{dil} limit.

(D) For enclosed combustion devices for which, during the performance test conducted under § 60.5413b(b), the combustion zone temperature is demonstrated to be an indicator of destruction efficiency, you must comply with the requirements in paragraphs (f)(1)(vii)(D)(*1*) and (*2*) of this section.

(*1*) Maintain the temperature at or above the minimum temperature established during the most recent performance test. The minimum temperature limit established during the most recent performance test is the average temperature recorded during each test run, averaged across the 3 test runs (average of the test run averages).

(*2*) Maintain the total gas flow to the enclosed combustion device at or above the minimum inlet gas flow rate and at or below the maximum inlet flow rate for the enclosed combustion device established in accordance with § 60.5417b(f).

(E) For catalytic vapor incinerators you must operate the catalytic vapor incinerator at or above the minimum temperature of the catalyst bed inlet and at or above the minimum temperature differential between the catalyst bed inlet and the catalyst bed outlet established in accordance with § 60.5417b(f).

(viii) If you use a carbon adsorption system as the control device to meet the requirements of § 60.5412b(a)(2), you must demonstrate compliance by the procedures in paragraphs (f)(1)(viii)(A) and (B) of this section, as applicable.

(A) If you use a regenerative-type carbon adsorption system, you must comply with paragraphs (f)(1)(viii)(A)(*1*) through (*4*) of this section.

(*1*) You must maintain the average regenerative mass flow or volumetric flow to the carbon adsorber during each bed regeneration cycle above the limit established in in accordance with § 60.5413b(c)(2).

(*2*) You must maintain the average carbon bed temperature above the temperature limit established in accordance with § 60.5413b(c)(2) during the carbon bed steaming cycle and below the carbon bed temperature established in in accordance with § 60.5413b(c)(2) after the regeneration cycle.

(*3*) You must check the mechanical connections for leakage at least every month, and you must perform a visual inspection at least every 3 months of all components of the continuous parameter monitoring system for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your continuous parameter monitoring system is not equipped with a redundant flow sensor.

(*4*) You must replace all carbon in the carbon adsorption system with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413b(c)(2).

(B) If you use a nonregenerative-type carbon adsorption system, you must replace all carbon in the control device with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413b(c)(3).

(ix) If you use a condenser as the control device to achieve the percent reduction performance requirements specified in § 60.5412b(a)(2), you must demonstrate compliance using the procedures in paragraphs (f)(1)(ix)(A) through (E) of this section.

(A) You must establish a site-specific condenser performance curve according to § 60.5417b(f)(2).

(B) You must calculate the daily average condenser outlet temperature in accordance with § 60.5417b(e).

(C) You must determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (f)(1)(ix)(B) of this section and the condenser performance curve established under paragraph (f)(1)(ix)(A) of this section.

(D) Except as provided in paragraphs (f)(1)(ix)(D)(*1*) and (*2*) of this section, at the end of each operating day, you must calculate the 365-day rolling average TOC emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (f)(1)(ix)(C) of this section.

(*1*) After the compliance dates specified in § 60.5370b(a), if you have less than 120 days of data for determining average TOC emission reduction, you must calculate the average TOC emission reduction for the first 120 days of operation after the compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the 120-day average TOC emission reduction is equal to or greater than 95.0 percent.

(*2*) After 120 days and no more than 364 days of operation after the compliance date specified in § 60.5370b(a), you must calculate the average TOC emission reduction as the TOC emission reduction averaged over the number of days between the current day and the applicable compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the average TOC emission reduction is equal to or greater than 95.0 percent.

(E) If you have data for 365 days or more of operation, you have demonstrated compliance with the TOC emission reduction if the rolling 365-day average TOC emission reduction calculated in paragraph (f)(1)(ix)(D) of this section is equal to or greater than 95.0 percent.

(x) During each inspection conducted using an OGI camera under § 60.5397b and during each periodic screening event or each inspection conducted using an OGI camera under § 60.5398b, you must observe each enclosed combustion device and flare to determine if it is operating properly. You must determine whether there is a flame present and whether any uncontrolled emissions from the control device are visible with the OGI camera or the technique used to conduct the periodic screening event. During each inspection conducted under § 60.5397b using AVO, you must observe each enclosed combustion device and flare to determine if it is operating properly. Visually confirm that the pilot or combustion flame is lit and that the pilot or combustion flame is operating properly.

(xi) If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d), you must comply with paragraphs (f)(1)(xi)(A) through (E) of this section.

(A) You must maintain the combustion efficiency at or above 95.0 percent. Alternatively, if the alternative test method does not directly monitor combustion efficiency, you must comply with the applicable requirements in paragraphs (f)(1)(xi)(A)(*1*) and (*2*) of this section.

(*1*) Maintain the NHV_{cz} at or above 270 Btu/scf.

(*2*) For flares or enclosed combustion devices with perimeter assist air, maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the flare or enclosed combustion device is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are only required to comply with the NHV_{cz} limit specified in paragraph (f)(1)(xi)(A)(*1*) of this section.

(B) You must calculate the value of the applicable monitored metric(s) in accordance with the approved alternative test method. Compliance with the limit is achieved when the calculated values are within the range specified in paragraph (f)(1)(xi)(A) of this section.

(C) You must conduct monitoring using the alternative test method at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities, including, as applicable, system accuracy audits and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response

to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(D) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report values to demonstrate compliance with the limits specified in paragraph (f)(1)(xi)(A) of this section. You must use all the data collected during all other required data collection periods to assess the operation of the control device and associated control system.

(E) Failure to collect required data is a deviation of the monitoring requirements.

(2) You must maintain the records as specified in § 60.5420b(c)(11) and (13).

(3) You must comply with the reporting requirements in § 60.5420b(b)(11) through (13).

* * * * *

(h) *Process controller affected facility.* To demonstrate continuous compliance with GHG and VOC emission standards for your process controller affected facility as required by § 60.5390b, you must comply with paragraphs (h)(1) through (4) of this section, as applicable.

(1) You must demonstrate that your process controller affected facility does not emit any VOC or methane to the atmosphere by meeting the requirements of paragraphs (h)(1)(i) or (ii) of this section.

(i) If you comply by routing the emissions to a process, you must route emissions through a closed vent system and continuously comply with the closed vent system inspection and monitoring requirements of § 60.5416b.

(ii) If you comply by using a self-contained natural gas-driven process controller, you must conduct the no identifiable emissions inspections required by § 60.5416b(b).

(2) For each process controller affected facility located at a site in Alaska that does not have access to electrical power and that complies by reducing methane and VOC emissions from all controllers in the process controller affected facility by 95.0 percent in accordance with § 60.5390b(b)(3), you must route emissions to a control device through a closed vent system and continuously comply with the closed vent requirements of § 60.5416b and the requirements in paragraph (f) of this section for the control device.

(3) You must submit the annual report for your process controller as required in § 60.5420b(b)(1), (7), and (11) through (13), as applicable.

(4) You must maintain the records as specified in § 60.5420b(c)(6), (8), (10), and (12) for each process controller affected facility, as applicable.

(i) *Storage vessel affected facility.* For each storage vessel affected facility, you must demonstrate continuous compliance with the requirements of § 60.5395b according to paragraphs (i)(1) through (10) of this section, as applicable.

(1) For each storage vessel affected facility complying with the requirements of § 60.5395b(a)(2), you must demonstrate continuous compliance according to paragraphs (i)(5), (9) and (10) of this section.

(2) For each storage vessel affected facility complying with the requirements of § 60.5395b(a)(3), you must demonstrate continuous compliance according to paragraphs (i)(2)(i), (ii), or (iii) of this section, as applicable, and (i)(9) and (10) of this section.

(i) You must maintain the uncontrolled actual VOC emissions at less than 4 tpy and the uncontrolled actual methane emissions at less than 14 tpy from the storage vessel affected facility.

(ii) You must comply with paragraph (i)(5) of this section as soon as liquids from the well are routed to the storage vessel affected facility following fracturing or refracturing according to the requirements of § 60.5395b(a)(3)(i).

(iii) You must comply with paragraph (i)(5) of this section within 30 days of the monthly determination according to the requirements of § 60.5395b(a)(3)(ii), where the monthly emissions determination indicates that VOC emissions from your storage vessel affected facility increase to 4 tpy or greater or methane emissions from your storage vessel affected facility increase to 14 tpy or greater and the increase is not associated with fracturing or refracturing of a well feeding the storage vessel affected facility.

(3) For each storage vessel affected facility or portion of a storage vessel affected facility removed from service, you must demonstrate compliance with the requirements of § 60.5395b(c)(1) or (2) by complying with paragraphs (i)(6), (7), (9), and (10) of this section.

(4) For each storage vessel affected facility or portion of a storage vessel affected facility returned to service, you must demonstrate compliance with the requirements of § 60.5395b(c)(3) and (4) by complying with paragraphs (i)(8) through (10) of this section.

(5) For each storage vessel affected facility, you must comply with paragraphs (i)(5)(i) and (ii) of this section.

(i) You must reduce VOC emissions as specified in § 60.5395b(a)(2).

(ii) For each control device installed to meet the requirements of § 60.5395b(a)(2), you must demonstrate continuous compliance with the performance requirements of § 60.5412b for each storage vessel affected facility using the procedure specified in paragraphs (i)(5)(ii)(A) and (i)(5)(ii)(B) of this section. When routing emissions to a process, you must demonstrate continuous compliance as specified in paragraph (i)(5)(ii)(A) of this section.

(A) You must comply with § 60.5416b for each cover and closed vent system.

(B) You must comply with the requirements specified in paragraph (f) of this section.

(6) You must completely empty and degas each storage vessel, such that each storage vessel no longer contains crude oil, condensate, produced water or intermediate hydrocarbon liquids. For a portion of a storage vessel affected facility to be removed from service, you must completely empty and degas the storage vessel(s), such that the storage vessel(s) no longer contains crude oil, condensate, produced water, or intermediate hydrocarbon liquids. A storage vessel where liquid is left on walls, as bottom clingage, or in pools due to floor irregularity is considered to be completely empty.

(7) You must disconnect the storage vessel(s) from the tank battery by isolating the storage vessel(s) from the tank battery such that the storage vessel(s) is no longer manifolded to the tank battery by liquid or vapor transfer.

(8) You must determine the affected facility status of a storage vessel returned to service as provided in § 60.5365b(e)(6).

(9) You must submit the annual reports as required by § 60.5420b(b)(1), (8), and (11)(i) through (iv).

(10) You must maintain the records as required by § 60.5420b(c)(7) through (10) and (c)(12), as applicable.

* * * * *

(k) *Sweetening unit affected facility.* For each sweetening unit affected facility, you must demonstrate continuous compliance with the requirements of § 60.5405b(b) according to paragraphs (k)(1) through (10) of this section.

(1) You must determine the minimum required continuous reduction efficiency of SO_2 emissions (Z_c) as required by § 60.5406b(b).

(2) You must determine the emission reduction efficiency (R) achieved by your sulfur reduction technology using

the procedures in § 60.5406b(c)(1) through (c)(4).

(3) You must demonstrate compliance with the standard at § 60.5405b(b) by comparing the minimum required sulfur dioxide emission reduction efficiency (Z_c) to the emission reduction efficiency achieved by the sulfur recovery technology (R), where R must be greater than or equal to Z_c.

(4) You must calibrate, maintain, and operate monitoring devices or perform measurements to determine the accumulation of sulfur product, the H_2S concentration, the average acid gas flow rate, and the sulfur feed rate in accordance with § 60.5407b(a).

(5) You must determine the required SO_2 emissions reduction efficiency each 24-hour period in accordance with § 60.5407b(a), § 60.5407b(d), and § 60.5407b(e), as applicable.

(6) You must calibrate, maintain, and operate monitoring devices and continuous emission monitors in accordance with § 60.5407b(b), (f), and (g), if you use an oxidation control system or a reduction control system followed by an incineration device.

(7) You must continuously operate the incineration device, if you use an oxidation control system or a reduction control system followed by an incineration device.

(8) You must calibrate, maintain, and operate a continuous monitoring system to measure the emission rate of reduced sulfur compounds in accordance with § 60.5407b(c), (f), and (g), if you use a reduction control system not followed by an incineration device.

(9) You must submit the reports as required by § 60.5423b(d).

(10) You must maintain the records as required by § 60.5423b(a), (e), and (f), as applicable.

(l) *Continuous compliance.* For each fugitive emissions components affected facility, you must demonstrate continuous compliance with the requirements of § 60.5397b(a) according to paragraphs (l)(1) through (4) of this section.

(1) *Monitoring.* You must conduct periodic monitoring surveys as required in § 60.5397b(e) and (g).

(2) *Repairs.* You must repair each identified source of fugitive emissions as required in § 60.5397b(h).

(3) *Reports.* You must submit annual reports for fugitive emissions components affected facilities as required in § 60.5420b(b)(1) and (9).

(4) *Records.* You must maintain records as specified in § 60.5420b(c)(14).

■ 28. Amend § 60.5416b by revising paragraphs (a) introductory text and (b)(2) to read as follows:

§ 60.5416b What are the initial and continuous cover and closed vent system inspection and monitoring requirements?

* * * * *

(a) *Inspections for closed vent systems, covers, and bypass devices.* If you install a control device or route emissions to a process, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (a)(1) and (2) of this section, inspect each cover according to the procedures and schedule specified in paragraph (a)(3) of this section, and inspect each bypass device according to the procedures of paragraph (a)(4) of this section, except as provided in paragraphs (b)(7) and (8) of this section.

* * * * *

(b) * * *

(2) *OGI application.* Where OGI is used, the closed vent system, cover, or self-contained process controller is determined to operate with no identifiable emissions if no emissions are imaged during the inspection. Emissions imaged by OGI constitute a deviation of the no identifiable emissions standard until an OGI inspection conducted in accordance with paragraph (b)(1) of this section determines that the closed vent system, cover, or self-contained process controller, as applicable, operates with no identifiable emissions.

* * * * *

■ 29. Amend § 60.5417b by revising paragraphs (a), (d)(8) introductory text, (i)(4) and (5), and (j) to read as follows:

§ 60.5417b What are the continuous monitoring requirements for my control devices?

* * * * *

(a) For each control device used to comply with the emission reduction standard in § 60.5377b(b) for well affected facilities, § 60.5380b(a)(1) for centrifugal compressor affected facilities, § 60.5385b(d)(2) for reciprocating compressor affected facilities, § 60.5390b(b)(3) for your process controller affected facility in Alaska, § 60.5393b(b)(3) for your pumps affected facility, § 60.5395b(a)(2) for your storage vessel affected facility, or either § 60.5400b(f) or § 60.5401b(e) for your process equipment affected facility, you must install and operate a continuous parameter monitoring system for each control device as specified in paragraphs (c) through (h) of this section, except as provided for in paragraph (b) of this section. If you install and operate a flare in accordance with § 60.5412b(a)(3), you are exempt from the requirements of paragraph (f) of this section. If you operate an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d), you must operate the control device as specified in paragraph (i) of this section instead of using the procedures specified in paragraphs (c) through (h) of this section. You must keep records and report in accordance with paragraph (j) of this section.

* * * * *

(d) * * *

(8) For an enclosed combustion device, other than those listed in paragraphs (d)(1) through (3) and (7) of this section, or for a flare, continuous monitoring systems as specified in paragraphs (d)(8)(i) through (iv) of this section and visible emission observations conducted as specified in paragraph (d)(8)(v) of this section. Additionally, for enclosed combustion devices or flares that are air-assisted or steam-assisted, the continuous monitoring systems specified in paragraph (d)(8)(vi) of this section.

* * * * *

(i) * * *

(4) If required by § 60.5412b(d)(4), you must conduct the inspections required by paragraph (d)(8)(v) of this section.

(5) If required by § 60.5412b(d)(5), you must install the pilot or combustion flame monitoring system required by paragraph (d)(8)(i) of this section.

* * * * *

(j) You must submit annual reports for control devices as required in § 60.5420b(b)(1) and (11). You must maintain records as specified in § 60.5420b(c)(11).

■ 30. Amend § 60.5420b by revising and republishing paragraphs (b), (c), and (d) introductory text to read as follows:

§ 60.5420b What are my notification, reporting, and recordkeeping requirements?

* * * * *

(b) *Reporting requirements.* You must submit annual reports containing the information specified in paragraphs (b)(1) through (14) of this section following the procedure specified in paragraph (b)(15) of this section. You must submit performance test reports as specified in paragraph (b)(12) or (13) of this section, if applicable. The initial annual report is due no later than 90 days after the end of the initial compliance period as determined according to § 60.5410b. Subsequent annual reports are due no later than the same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in

paragraphs (b)(1) through (14) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period. You must submit the information in paragraph (b)(1)(v) of this section, as applicable, for your well affected facility which undergoes a change of ownership during the reporting period, regardless of whether reporting under paragraphs (b)(2) through (4) of this section is required for the well affected facility.

(1) The general information specified in paragraphs (b)(1)(i) through (v) of this section is required for all reports.

(i) The company name, facility site name associated with the affected facility, U.S. Well ID or U.S. Well ID associated with the affected facility, if applicable, and address of the affected facility. If an address is not available for the site, include a description of the site location and provide the latitude and longitude coordinates of the site in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(ii) An identification of each affected facility being included in the annual report.

(iii) Beginning and ending dates of the reporting period.

(iv) A certification by a certifying official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. If your report is submitted via CEDRI, the certifier's electronic signature during the submission process replaces the requirement in this paragraph (b)(1)(iv).

(v) Identification of each well affected facility for which ownership changed due to sale or transfer of ownership including the United States Well Number; the latitude and longitude coordinates of the well affected facility in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983; and the information in paragraph (b)(1)(v)(A) or (B) of this section, as applicable.

(A) The name and contact information, including the phone number, email address, and mailing address, of the owner or operator to which you sold or transferred ownership of the well affected facility identified in paragraph (b)(1)(v) of this section.

(B) The name and contact information, including the phone number, email address, and mailing address, of the owner or operator from whom you acquired the well affected facility identified in paragraph (b)(1)(v) of this section.

(2) For each well affected facility that is subject to § 60.5375b(a) or (f), the records of each well completion operation conducted during the reporting period, including the information specified in paragraphs (b)(2)(i) through (xiv) of this section, if applicable. In lieu of submitting the records specified in paragraphs (b)(2)(i) through (xiv) of this section, the owner or operator may submit a list of each well completion with hydraulic fracturing completed during the reporting period, and the digital photograph required by paragraph (c)(1)(v) of this section for each well completion. For each well affected facility that routes all flowback entirely through one or more production separators, only the records specified in paragraphs (b)(2)(i) through (iv) and (vi) of this section are required to be reported. For periods where salable gas is unable to be separated, the records specified in paragraphs (b)(2)(iv) and (viii) through (xii) of this section must also be reported, as applicable. For each well affected facility that is subject to § 60.5375b(g), the record specified in paragraph (b)(2)(xv) of this section is required to be reported. For each well affected facility which makes a claim that the exemption in § 60.5375b(h) was met, the records specified in paragraph (b)(2)(i) through (iv) and (b)(2)(xvi) of this section are required to be reported.

(i) Well Completion ID.

(ii) Latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983.

(iii) U.S. Well ID.

(iv) The date and time of the onset of flowback following hydraulic fracturing or refracturing or identification that the well immediately starts production.

(v) The date and time of each attempt to direct flowback to a separator as required in § 60.5375b(a)(1)(ii).

(vi) The date and time that the well was shut in and the flowback equipment was permanently disconnected, or the startup of production.

(vii) The duration (in hours) of flowback.

(viii) The duration (in hours) of recovery and disposition of recovery (*i.e.,* routed to the gas flow line or collection system, re-injected into the well or another well, used as an onsite fuel source, or used for another useful purpose that a purchased fuel or raw material would serve).

(ix) The duration (in hours) of combustion.

(x) The duration (in hours) of venting.

(xi) The specific reasons for venting in lieu of capture or combustion.

(xii) For any deviations recorded as specified in paragraph (c)(1)(ii) of this section, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation.

(xiii) For each well affected facility subject to § 60.5375b(f), a record of the well type (*i.e.,* wildcat well, delineation well, or low pressure well (as defined § 60.5430b)) and supporting inputs and calculations, if applicable.

(xiv) For each well affected facility for which you claim an exception under § 60.5375b(a)(2), the specific exception claimed and reasons why the well meets the claimed exception.

(xv) For each well affected facility with less than 300 scf of gas per stock tank barrel of oil produced, the supporting analysis that was performed in order the make that claim, including but not limited to, GOR values for established leases and data from wells in the same basin and field.

(xvi) For each well affected facility which meets the exemption in § 60.5375b(h), a statement that the well completion operation requirements of § 60.5375b(a)(1) through (3) were met.

(3) For each well affected facility that is subject to § 60.5376b(a)(1) or (2), your annual report is required to include the information specified in paragraphs (b)(3)(i) and (ii) of this section, as applicable.

(i) For each well affected facility where all gas well liquids unloading operations comply with § 60.5376b(a)(1), your annual report must include the information specified in paragraphs (b)(3)(i)(A) through (C) of this section, as applicable.

(A) Identification of each well affected facility (U.S. Well ID or U.S. Well ID associated with the well affected facility) that conducts a gas well liquid unloading operation during the reporting period using a method that does not vent to the atmosphere and the technology or technique used. If more than one non-venting technology or technique is used, you must identify all of the differing non-venting liquids unloading methods used during the reporting period.

(B) Number of gas well liquids unloading operations conducted during the year where the well affected facility identified in (b)(3)(i)(A) had unplanned venting to the atmosphere and best

management practices were conducted according to your best management practice plan, as required by § 60.5376b(c). If no venting events occurred, the number would be zero. Other reported information required to be submitted where unplanned venting occurs is specified in paragraphs (b)(3)(i)(B)(*1*) and (*2*) of this section.

(*1*) Log of best management practice plan steps used during the unplanned venting to minimize emissions to the maximum extent possible.

(*2*) The number of liquids unloading events during the year where deviations from your best management practice plan occurred, the date and time the deviation began, the duration of the deviation in hours, documentation of why best management practice plan steps were not followed, and what steps, in lieu of your best management practice plan steps, were followed to minimize emissions to the maximum extent possible.

(C) The number of liquids unloading events where unplanned emissions are vented to the atmosphere during a gas well liquids unloading operation where you complied with best management practices to minimize emissions to the maximum extent possible.

(ii) For each well affected facility where all gas well liquids unloading operations comply with § 60.5376b(b) and (c) best management practices, your annual report must include the information specified in paragraphs (b)(3)(ii)(A) through (E) of this section.

(A) Identification of each well affected facility that conducts a gas well liquids unloading during the reporting period.

(B) Number of liquids unloading events conducted during the reporting period.

(C) Log of best management practice plan steps used during the reporting period to minimize emissions to the maximum extent possible.

(D) The number of liquids unloading events during the year that best management practices were conducted according to your best management practice plan.

(E) The number of liquids unloading events during the year where deviations from your best management practice plan occurred, the date and time the deviation began, the duration of the deviation in hours, documentation of why best management practice plan steps were not followed, and what steps, in lieu of your best management practice plan steps, were followed to minimize emissions to the maximum extent possible.

(4) For each associated gas well subject to § 60.5377b, your annual report is required to include the applicable information specified in paragraphs (b)(4)(i) through (vi) of this section, as applicable.

(i) For each associated gas well that complies with § 60.5377b(a)(1), (2), (3), or (4) your annual report is required to include the information specified in paragraphs (b)(4)(i)(A) and (B) of this section.

(A) An identification of each associated gas well constructed, modified, or reconstructed during the reporting period that complies with § 60.5377b(a)(1), (2), (3), or (4).

(B) The information specified in paragraphs (b)(2)(i)(B)(*1*) through (*3*) of this section for each incident when the associated gas was temporarily routed to a flare or control device in accordance with § 60.5377b(d).

(*1*) The reason in § 60.5377b(d)(1), (2), (3), or (4) for each incident.

(*2*) The start date and time of each incident of routing associated gas to the flare or control device, along with the total duration in hours of each incident.

(*3*) Documentation that all CVS requirements specified in § 60.5411b(a) and (c) and all applicable flare or control device requirements specified in § 60.5412b were met during each period when the associated gas is routed to the flare or control device.

(ii) For all instances where you temporarily vent the associated gas in accordance with § 60.5377b(e), you must report the information specified in paragraphs (b)(4)(ii)(A) through (D) of this section. This information is required to be reported if you are routinely complying with § 60.5377b(a) or § 60.5377b(f) or temporarily complying with § 60.5377b(d). In addition to this information for each incident, you must report the cumulative duration in hours of venting incidents and the cumulative VOC and methane emissions in pounds for all incidents in the calendar year.

(A) The reason in § 60.5377b(e)(1), (2), or (3) for each incident.

(B) The start date and time of each incident of venting the associated gas, along with the total duration in hours of each incident.

(C) The VOC and methane emissions in pounds that were emitted during each incident.

(D) The total duration of venting for all incidents in the year, along with the cumulative VOC and methane emissions in pounds that were emitted.

(iii) For each associated gas well that complies with the requirements of § 60.5377b(f) your annual report must include the information specified in paragraphs (b)(4)(iii)(A) through (E) of this section. The information in paragraphs (b)(4)(iii)(A) and (B) of this section is only required in the initial annual report.

(A) An identification of each associated gas well that commenced construction between May 7, 2024, and May 7, 2026. This identification must include the certification of why it is infeasible to comply with § 60.5377b(a)(1), (2), (3), or (4) in accordance with § 60.5377b(g).

(B) An identification of each associated gas well that commenced construction between December 6, 2022, and May 7, 2024. This identification must include the certification of why it is infeasible to comply with § 60.5377b(a)(1), (2), (3), or (4) in accordance with § 60.5377b(g).

(C) An identification of each associated gas well modified or reconstructed during the reporting period that complies by routing the gas to a control device that reduces VOC and methane emissions by at least 95.0 percent. This identification must include the certification of why it is infeasible to comply with § 60.5377b(a)(1), (2), (3), or (4) in accordance with § 60.5377b(g).

(D) For each associated gas well that was constructed, modified or reconstructed in a previous reporting period that complies by routing the gas to a control device that reduces VOC and methane emissions by at least 95.0 percent, a re-certification of why it is infeasible to comply with § 60.5377b(a)(1), (2), (3), or (4) in accordance with § 60.5377b(g).

(E) The information specified in paragraphs (b)(11)(i) through (iv) of this section.

(iv) If you comply with § 60.5377b(f) with a control device, identification of the associated gas well using the control device and the information in paragraph (b)(11)(v) of this section.

(v) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(11)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(vi) For each deviation recorded as specified in paragraph (c)(3)(v) of this section, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(5) For each wet seal centrifugal compressor affected facility, the information specified in paragraphs (b)(5)(i) through (v) of this section. For each self-contained wet seal centrifugal compressor, Alaska North Slope centrifugal compressor equipped with

sour seal oil separator and capture system, or dry seal centrifugal compressor affected facility, the information specified in paragraphs (b)(5)(vi) through (ix) of this section.

(i) An identification of each centrifugal compressor constructed, modified, or reconstructed during the reporting period.

(ii) For each deviation that occurred during the reporting period and recorded as specified in paragraph (c)(4) of this section, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(iii) If required to comply with § 60.5380b(a)(2) or (3), the information specified in paragraphs (b)(11)(i) through (iv) of this section, as applicable.

(iv) If complying with § 60.5380b(a)(1) with a control device, identification of the centrifugal compressor with the control device and the information in paragraph (b)(11)(v) of this section.

(v) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(11)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(vi) If complying with § 60.5380b(a)(4), (5), or (6) for a self-contained wet seal centrifugal compressor, Alaska North Slope centrifugal compressor equipped with sour seal oil separator and capture system, or dry seal centrifugal compressor requirements, the cumulative number of hours of operation since initial startup, since May 7, 2024, or since the previous volumetric flow rate emissions measurement, as applicable, which have elapsed prior to conducting your volumetric flow rate emission measurement or emissions screening.

(vii) A description of the method used and the results of the volumetric emissions measurement or emissions screening, as applicable.

(viii) Number and type of seals on delay of repair and explanation for each delay of repair.

(ix) Date of planned shutdown(s) that occurred during the reporting period if there are any seals that have been placed on delay of repair.

(6) For each reciprocating compressor affected facility, the information specified in paragraphs (b)(6)(i) through (vii) of this section, as applicable.

(i) The cumulative number of hours of operation since initial startup, since May 7, 2024, since the previous volumetric flow rate measurement, or since the previous reciprocating compressor rod packing replacement, as applicable, which have elapsed prior to conducting your volumetric flow rate measurement or emissions screening. Alternatively, a statement that emissions from the rod packing are being routed to a process or control device through a closed vent system.

(ii) If applicable, for each deviation that occurred during the reporting period and recorded as specified in paragraph (c)(5)(i) of this section, the date and time the deviation began, duration of the deviation in hours and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(iii) A description of the method used and the results of the volumetric flow rate measurement or emissions screening, as applicable.

(iv) If complying with § 60.5385b(d)(1) or (2), the information in paragraphs (b)(11)(i) through (iv) of this section. If complying by routing emissions to a control device, as required in § 60.5385b(d)(2), the information in paragraph (b)(11)(v) of this section.

(v) Number and type of rod packing replacements/repairs on delay of repair and explanation for each delay of repair.

(vi) Date of planned shutdown(s) that occurred during the reporting period if there are any rod packing replacements/repairs that have been placed on delay of repair.

(vii) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(11)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(7) For each process controller affected facility, the information specified in paragraphs (b)(7)(i) through (iii) of this section in your initial annual report and in subsequent annual reports for each process controller affected facility that is constructed, modified, or reconstructed during the reporting period. Each annual report must contain the information specified in paragraphs (b)(7)(iv) through (x) of this section for each process controller affected facility.

(i) An identification of each process controller that is driven by natural gas, as required by § 60.5390b(d), that allows traceability to the records required in paragraph (c)(6)(i) of this section.

(ii) For each process controller in the affected facility complying with § 60.5390b(a), you must report the information specified in paragraphs (b)(7)(ii)(A) and (B) of this section, as applicable.

(A) An identification of each process controller complying with § 60.5390b(a) by routing the emissions to a process.

(B) An identification of each process controller complying with § 60.5390b(a) by using a self-contained natural gas-driven process controller.

(iii) For each process controller affected facility located at a site in Alaska that does not have access to electrical power and that complies with § 60.5390b(b), you must report the information specified in paragraphs (b)(7)(iii)(A), (B), or (C) of this section, as applicable.

(A) For each process controller complying with § 60.5390b(b)(1) process controller bleed rate requirements, you must report the information specified in paragraphs (b)(7)(iii)(A)(*1*) and (*2*) of this section.

(*1*) The identification of process controllers designed and operated to achieve a bleed rate less than or equal to 6 scfh.

(*2*) Where necessary to meet a functional need, the identification and demonstration why it is necessary to use a process controller with a natural gas bleed rate greater than 6 scfh.

(B) An identification of each intermittent vent process controller complying with the requirements in paragraph § 60.5390b(b)(2).

(C) An identification of each process controller complying with the requirements in § 60.5390b(b) by routing emissions to a control device in accordance with § 60.5390b(b)(3).

(iv) Identification of each process controller which changes its method of compliance during the reporting period and the applicable information specified in paragraphs (b)(7)(v) through (ix) of this section for the new method of compliance.

(v) For each process controller in the affected facility complying with the requirements of § 60.5390b(a) by routing the emissions to a process, you must report the information specified in (b)(11)(i) through (iii) of this section.

(vi) For each process controller in the affected facility complying with the requirements of § 60.5390b(a) by using a self-contained natural gas-driven process controller, you must report the information specified in paragraphs (b)(7)(vi)(A) and (B) of this section.

(A) Dates of each inspection required under § 60.5416b(b); and

(B) Each defect or leak identified during each natural gas-driven-self-contained process controller system inspection, and the date of repair or date of anticipated repair if repair is delayed.

(vii) For each process controller in the affected facility complying with the requirements of § 60.5390b(b)(2), you must report the information specified in paragraphs (b)(7)(vii)(A) and (B) of this section.

(A) Dates and results of the intermittent vent process controller monitoring required by § 60.5390b(b)(2)(ii).

(B) For each instance in which monitoring identifies emissions to the atmosphere from an intermittent vent controller during idle periods, the date of repair or replacement or the date of anticipated repair or replacement if the repair or replacement is delayed, and the date and results of the re-survey after repair or replacement.

(viii) For each process controller affected facility complying with § 60.5390b(b)(3) by routing emissions to a control device, you must report the information specified in paragraph (b)(11) of this section.

(ix) For each deviation that occurred during the reporting period, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(x) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(7)(vi) and (vii) and (b)(11)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(8) For each storage vessel affected facility, the information in paragraphs (b)(8)(i) through (x) of this section.

(i) An identification, including the location, of each storage vessel affected facility, including those for which construction, modification, or reconstruction commenced during the reporting period, and those provided in previous reports. The location of the storage vessel affected facility shall be in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(ii) Documentation of the methane and VOC emission rate determination according to § 60.5365b(e)(1) for each tank battery that became an affected facility during the reporting period or is returned to service during the reporting period.

(iii) For each deviation that occurred during the reporting period and recorded as specified in paragraph (c)(7)(iii) of this section, the date and time the deviation began, duration of the deviation in hours and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(iv) For each storage vessel affected facility constructed, modified, reconstructed, or returned to service during the reporting period complying with § 60.5395b(a)(2) with a control device, report the identification of the storage vessel affected facility with the control device and the information in paragraph (b)(11)(v) of this section.

(v) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(11)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(vi) If required to comply with § 60.5395b(b)(1), the information in paragraphs (b)(11)(i) through (iv) of this section.

(vii) You must identify each storage vessel affected facility that is removed from service during the reporting period as specified in § 60.5395b(c)(1)(ii), including the date the storage vessel affected facility was removed from service. You must identify each storage vessel that that is removed from service from a storage vessel affected facility during the reporting period as specified in § 60.5395b(c)(2)(iii), including identifying the impacted storage vessel affected facility and the date each storage vessel was removed from service.

(viii) You must identify each storage vessel affected facility or portion of a storage vessel affected facility returned to service during the reporting period as specified in § 60.5395b(c)(4), including the date the storage vessel affected facility or portion of a storage vessel affected facility was returned to service.

(ix) You must identify each storage vessel affected facility that no longer complies with § 60.5395b(a)(3) and instead complies with § 60.5395b(a)(2). You must identify whether the change in the method of compliance was due to fracturing or refracturing or whether the change was due to an increase in the monthly emissions determination. If the change was due to an increase in the monthly emissions determination, you must provide documentation of the emissions rate. You must identify the date that you complied with § 60.5395b(a)(2) and must submit the information in (b)(8)(iii) through (vii) of this section.

(x) You must submit a statement that you are complying with § 60.112b(a)(1) or (2), if applicable, in your initial annual report.

(9) For the fugitive emissions components affected facility, report the information specified in paragraphs (b)(9)(i) through (v) of this section, as applicable.

(i)(A) Designation of the type of site (*i.e.,* well site, centralized production facility, or compressor station) at which the fugitive emissions components affected facility is located.

(B) For the fugitive emissions components affected facility at a well site or centralized production facility that became an affected facility during the reporting period, you must include the date of the startup of production or the date of the first day of production after modification. For the fugitive emissions components affected facility at a compressor station that became an affected facility during the reporting period, you must include the date of startup or the date of modification.

(C) For the fugitive emissions components affected facility at a well site, you must specify what type of well site it is (*i.e.,* single wellhead only well site, small wellsite, multi-wellhead only well site, or a well site with major production and processing equipment).

(D) For the fugitive emissions components affected facility at a well site where during the reporting period you complete the removal of all major production and processing equipment such that the well site contains only one or more wellheads, you must include the date of the change to status as a wellhead only well site.

(E) For the fugitive emissions components affected facility at a well site where you previously reported under paragraph (b)(9)(i)(D) of this section the removal of all major production and processing equipment and during the reporting period major production and processing equipment is added back to the well site, the date that the first piece of major production and processing equipment is added back to the well site.

(F) For the fugitive emissions components affected facility at a well site where during the reporting period you undertake well closure requirements, the date of the cessation of production from all wells at the well site, the date you began well closure activities at the well site, and the dates of the notifications submitted in accordance with paragraph (a)(4) of this section.

(ii) For each fugitive emissions monitoring survey performed during the annual reporting period, the information specified in paragraphs (b)(9)(ii)(A) through (G) of this section.

(A) Date of the survey.

(B) Monitoring instrument or, if the survey was conducted by AVO methods, notation that AVO was used.

(C) Any deviations from the monitoring plan elements under § 60.5397b(c)(1), (2), and (7), (c)(8)(i), or (d) or a statement that there were no deviations from these elements of the monitoring plan.

(D) Number and type of components for which fugitive emissions were detected.

(E) Number and type of fugitive emissions components that were not repaired as required in § 60.5397b(h).

(F) Number and type of fugitive emission components (including designation as difficult-to-monitor or unsafe-to-monitor, if applicable) on delay of repair and explanation for each delay of repair.

(G) Date of planned shutdown(s) that occurred during the reporting period if there are any components that have been placed on delay of repair.

(iii) For the fugitive emissions components affected facility complying with an alternative fugitive emissions standard under § 60.5399b, in lieu of the information specified in paragraphs (b)(9)(i) and (ii) of this section, you must provide the information specified in paragraphs (b)(9)(iii)(A) through (C) of this section.

(A) The alternative standard with which you are complying.

(B) The site-specific reports specified by the specific alternative fugitive emissions standard, submitted in the format in which they were submitted to the state, local, or Tribal authority. If the report is in hard copy, you must scan the document and submit it as an electronic attachment to the annual report required in paragraph (b) of this section.

(C) If the report specified by the specific alternative fugitive emissions standard is not site-specific, you must submit the information specified in paragraphs (b)(9)(i) and (ii) of this section for each individual site complying with the alternative standard.

(iv) For well closure activities which occurred during the reporting period, the information in paragraphs (b)(9)(iv)(A) and (B) of this section.

(A) A status report with dates for the well closure activities schedule developed in the well closure plan. If all steps in the well closure plan are completed in the reporting period, the date that all activities are completed.

(B) If an OGI survey is conducted during the reporting period, the information in paragraphs (b)(9)(iv)(B)(*1*) through (*3*) of this section.

(*1*) Date of the OGI survey.

(*2*) Monitoring instrument used.

(*3*) A statement that no fugitive emissions were found, or if fugitive emissions were found, a description of the steps taken to eliminate those emissions, the date of the resurvey, the results of the resurvey, and the date of the final resurvey which detected no emissions.

(v) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(9)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(10) For each pump affected facility, the information specified in paragraphs (b)(10)(i) through (iv) of this section in your initial annual report and in subsequent annual reports for each pump affected facility that is constructed, modified, or reconstructed during the reporting period. Each annual report must contain the information specified in paragraphs (b)(10)(v) through (ix) of this section for each pump affected facility.

(i) The identification of each of your pumps that are driven by natural gas, as required by § 60.5393b(a) that allows traceability to the records required by paragraph (c)(15)(i) of this section.

(ii) For each pump affected facility for which there is a control device on site but it does not achieve a 95.0 percent emissions reduction, the certification that there is a control device available on site but it does not achieve a 95.0 percent emissions reduction required under § 60.5393b(b)(5). You must also report the emissions reduction percentage the control device is designed to achieve.

(iii) For each pump affected facility for which there is no control device or vapor recovery unit on site, the certification required under § 60.5393b(b)(6) that there is no control device or vapor recovery unit on site.

(iv) For each pump affected facility for which it is technically infeasible to route the emissions to a process or control device, the certification of technically infeasibility required under § 60.5393b(b)(7).

(v) For any pump affected facility which has previously reported as required under paragraph (b)(10)(i) through (iv) of this section and for which a change in the reported condition has occurred during the reporting period, provide the identification of the pump affected facility and the date that the pump affected facility meets one of the change conditions described in paragraphs (b)(10)(v)(A), (B), or (C) of this section.

(A) If you install a control device or vapor recovery unit, you must report that a control device or vapor recovery unit has been added to the site and that the pump affected facility now is required to comply with § 60.5393b(b)(2), (3) or (5), as applicable.

(B) If your pump affected facility previously complied with § 60.5393b(b)(2), (3) or (5) by routing emissions to a process or a control device and the process or control device is subsequently removed from the site or is no longer available such that there is no ability to route the emissions to a process or control device at the site, or that it is not technically feasible to capture and route the emissions to another control device or process located on site, report that you are no longer complying with the applicable requirements of § 60.5393b(b)(2), (3), or (5) and submit the information provided in paragraphs (b)(10)(v)(B)(*1*) or (*2*) of this section.

(*1*) Certification that there is no control device or vapor recovery unit on site.

(*2*) Certification of the engineering assessment that it is technically infeasible to capture and route the emissions to another control device or process located on site.

(C) If any pump affected facility or individual natural gas-driven pump changes its method of compliance during the reporting period other than for the reasons specified in paragraphs (10)(v)(A) and (B) of this section, identify the new compliance method for each natural gas-driven pump within the affected facility which changes its method of compliance during the reporting period and provide the applicable information specified in paragraphs (b)(10)(ii) through (iv) and (vi) through (viii) of this section for the new method of compliance.

(vi) For each pump affected facility complying with the requirements of § 60.5393b(a), (b)(1), or (b)(3) by routing the emissions to a process, you must report the information specified in paragraphs (b)(11)(i) through (iv) of this section.

(vii) For each pump affected facility complying with the requirements of § 60.5393b(b)(3) or (5) by routing the emissions to a control device, you must report the information required under paragraphs (b)(11)(i) through (v) of this section.

(viii) For each deviation that occurred during the reporting period, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement

that no deviations occurred during the reporting period.

(ix) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (b)(11)(i) and (ii) of this section, you must provide the information specified in § 60.5424b.

(11) For each well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment affected facility which uses a closed vent system routed to a control device to meet the emissions reduction standard, you must submit the information in paragraphs (b)(11)(i) through (v) of this section. For each reciprocating compressor, process controller, pump, storage vessel, or process unit equipment which uses a closed vent system to route to a process, you must submit the information in paragraphs (b)(11)(i) through (iv) of this section. For each centrifugal compressor, reciprocating compressor, and storage vessel equipped with a cover, you must submit the information in paragraphs (b)(11)(i) and (ii) of this section.

(i) Dates of each inspection required under § 60.5416b(a) and (b).

(ii) Each defect or emissions identified during each inspection and the date of repair or the date of anticipated repair if the repair is delayed.

(iii) Date and time of each bypass alarm or each instance the key is checked out if you are subject to the bypass requirements of § 60.5416b(a)(4).

(iv) You must submit the certification signed by the qualified professional engineer or in-house engineer according to § 60.5411b(c) for each closed vent system routing to a control device or process in the reporting year in which the certification is signed.

(v) If you comply with the emissions standard for your well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment affected facility with a control device, the information in paragraphs (b)(11)(v)(A) through (L) of this section, unless you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d). If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d), the information in paragraphs (b)(11)(v)(A) through (C) and (L) through (P) of this section.

(A) Identification of the control device.

(B) Make, model, and date of installation of the control device.

(C) Identification of the affected facility controlled by the device.

(D) For each continuous parameter monitoring system used to demonstrate compliance for the control device, a unique continuous parameter monitoring system identifier and the make, model number, and date of last calibration check of the continuous parameter monitoring system.

(E) For each instance where there is a deviation of the control device in accordance with § 60.5417b(g)(1) through (3) or (g)(5) through (7) include the date and time the deviation began, the duration of the deviation in hours, the type of the deviation (*e.g.,* NHV operating limit, lack of pilot or combustion flame, condenser efficiency, bypass line flow, visible emissions), and cause of the deviation.

(F) For each instance where there is a deviation of the continuous parameter monitoring system in accordance with § 60.5417b(g)(4) include the date and time the deviation began, the duration of the deviation in hours, and cause of the deviation.

(G) For each visible emissions test following return to operation from a maintenance or repair activity, the date of the visible emissions test or observation of the video surveillance output, the length of the observation in minutes, and the number of minutes for which visible emissions were present.

(H) If a performance test was conducted on the control device during the reporting period, provide the date the performance test was conducted. Submit the performance test report following the procedures specified in paragraph (b)(12) of this section.

(I) If a demonstration of the NHV of the inlet gas to the enclosed combustion device or flare was conducted during the reporting period in accordance with § 60.5417b(d)(8)(iii), an indication of whether this is a re-evaluation of vent gas NHV and the reason for the re-evaluation; the applicable required minimum vent gas NHV; if twice daily samples of the vent stream were taken, the number of hourly average NHV values that are less than 1.2 times the applicable required minimum NHV; if continuous NHV sampling of the vent stream was conducted, the number of hourly average NHV values that are less than the required minimum vent gas NHV; if continuous combustion efficiency monitoring was conducted using an alternative test method approved under § 60.5412b(d), the number of values of the combustion efficiency that were less than 95.0 percent; the resulting determination of whether NHV monitoring is required or not in accordance with § 60.5417b(d)(8)(iii)(D) or (H); and an indication of whether the enclosed combustion device or flare has the potential to receive inert gases, and if so, whether the sampling included periods where the highest percentage of inert gases were sent to the enclosed combustion device or flare.

(J) If a demonstration was conducted in accordance with § 60.5417b(d)(8)(iv) that the maximum potential pressure of units manifolded to an enclosed combustion device or flare cannot cause the maximum inlet flow rate established in accordance with § 60.5417b(f)(1) or a flare tip velocity limit of 18.3 meter/second (60 feet/second) to be exceeded, an indication of whether this is a re-evaluation of the gas flow and the reason for the re-evaluation; the demonstration conducted; and applicable engineering calculations.

(K) For each periodic sampling event conducted under § 60.5417b(d)(8)(iii)(G), provide the date of the sampling, the required minimum vent gas NHV, and the NHV value for each vent gas sample.

(L) For each flare and enclosed combustion device, provide the date each device is observed with OGI in accordance with § 60.5415b(f)(1)(x) and whether uncombusted emissions were present. Provide the date each device was visibly observed during an AVO inspection in accordance with § 60.5415b(f)(1)(x), whether the pilot or combustion flame was lit at the time of observation, and whether the device was found to be operating properly.

(M) An identification of the alternative test method used.

(N) For each instance where there is a deviation of the control device in accordance with § 60.5417b(i)(6)(i) or (iii) through (v) include the date and time the deviation began, the duration of the deviation in hours, the type of the deviation (*e.g.,* NHV_{cz} operating limit, lack of pilot or combustion flame, visible emissions), and cause of the deviation.

(O) For each instance where there is a deviation of the data availability in accordance with § 60.5417b(i)(6)(ii) include the date of each operating day when monitoring data are not available for at least 75 percent of the operating hours.

(P) If no deviations occurred under paragraphs (b)(11)(v)(N) or (O) of this section, a statement that there were no deviations for the control device during the annual report period.

(Q) Any additional information required to be reported as specified by the Administrator as part of the alternative test method approval under § 60.5412b(d).

(12) Within 60 days after the date of completing each performance test (see § 60.8) required by this subpart, except testing conducted by the manufacturer as specified in § 60.5413b(d), you must submit the results of the performance test following the procedures specified in paragraph (d) of this section. Data collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test must be included as an attachment in the ERT or alternate electronic file.

(13) For combustion control devices tested by the manufacturer in accordance with § 60.5413b(d), an electronic copy of the performance test results required by § 60.5413b(d) shall be submitted via email to *Oil_and_Gas_PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following website: *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry*.

(14) If you had a super-emitter event during the reporting period, the start date of the super-emitter event, the duration of the super-emitter event in hours, and the affected facility associated with the super-emitter event, if applicable.

(15) You must submit your annual report using the appropriate electronic report template on the Compliance and Emissions Data Reporting Interface (CEDRI) website for this subpart and following the procedure specified in paragraph (d) of this section. If the reporting form specific to this subpart is not available on the CEDRI website at the time that the report is due, you must submit the report to the Administrator at the appropriate address listed in § 60.4. Once the form has been available on the CEDRI website for at least 90 calendar days, you must begin submitting all subsequent reports via CEDRI. The date reporting forms become available will be listed on the CEDRI website. Unless the Administrator or delegated state agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted.

(c) *Recordkeeping requirements.* You must maintain the records identified as specified in § 60.7(f) and in paragraphs (c)(1) through (15) of this section. All records required by this subpart must be maintained either onsite or at the nearest local field office for at least 5 years. Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

(1) The records for each well affected facility subject to the well completion operation standards of § 60.5375b, as specified in paragraphs (c)(1)(i) through (vii) of this section, as applicable. For each well affected facility subject to the well completion operations of § 60.5375b, for which you make a claim that the well affected facility is not subject to the requirements for well completions pursuant to § 60.5375b(g), you must maintain the record in paragraph (c)(1)(vi) of this section, only. For each well affected facility which meets the exemption in § 60.5375b(h) for well completion operations (*i.e.,* an existing well is hydraulically refractured), you must maintain the records in paragraph (c)(1)(viii), only. For each well affected facility that routes flowback entirely through one or more production separators that are designed to accommodate flowback, only records of the United States Well Number, the latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983, the Well Completion ID, and the date and time of startup of production are required. For periods where salable gas is unable to be separated, records of the date and time of onset of flowback, the duration and disposition of recovery, the duration of combustion and venting (if applicable), reasons for venting (if applicable), and deviations are required.

(i) Records identifying each well completion operation for each well affected facility.

(ii) Records of deviations in cases where well completion operations with hydraulic fracturing were not performed in compliance with the requirements specified in § 60.5375b, including the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(iii) You must maintain the records specified in paragraphs (c)(1)(iii)(A) through (C) of this section.

(A) For each well affected facility required to comply with the requirements of § 60.5375b(a), you must record: The latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983; the United States Well Number; the date and time of the onset of flowback following hydraulic fracturing or refracturing; the date and time of each attempt to direct flowback to a separator as required in § 60.5375b(a)(1)(ii); the date and time of each occurrence of returning to the initial flowback stage under § 60.5375b(a)(1)(i); and the date and time that the well was shut in and the flowback equipment was permanently disconnected, or the startup of production; the duration of flowback; duration of recovery and disposition of recovery (*i.e.,* routed to the gas flow line or collection system, re-injected into the well or another well, used as an onsite fuel source, or used for another useful purpose that a purchased fuel or raw material would serve); duration of combustion; duration of venting; and specific reasons for venting in lieu of capture or combustion. The duration must be specified in hours. In addition, for wells where it is technically infeasible to route the recovered gas as specified in § 60.5375b(a)(1)(ii), you must record the reasons for the claim of technical infeasibility with respect to all four options provided in § 60.5375b(a)(1)(ii).

(B) For each well affected facility required to comply with the requirements of § 60.5375b(f), you must record: Latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983; the United States Well Number; the date and time of the onset of flowback following hydraulic fracturing or refracturing; the date and time that the well was shut in and the flowback equipment was permanently disconnected, or the startup of production; the duration of flowback; duration of combustion; duration of venting; and specific reasons for venting in lieu combustion. The duration must be specified in hours.

(C) For each well affected facility for which you make a claim that it meets the criteria of § 60.5375b(a)(1)(iii)(A), you must maintain the following:

(*1*) The latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of

1983; the United States Well Number; the date and time of the onset of flowback following hydraulic fracturing or refracturing; the date and time that the well was shut in and the flowback equipment was permanently disconnected, or the startup of production; the duration of flowback; duration of recovery and disposition of recovery (*i.e.,* routed to the gas flow line or collection system, re-injected into the well or another well, used as an onsite fuel source, or used for another useful purpose that a purchased fuel or raw material would serve); duration of combustion; duration of venting; and specific reasons for venting in lieu of capture or combustion. The duration must be specified in hours.

(*2*) If applicable, records that the conditions of § 60.5375b(a)(1)(iii)(A) are no longer met and that the well completion operation has been stopped and a separator installed. The records shall include the date and time the well completion operation was stopped and the date and time the separator was installed.

(*3*) A record of the claim signed by the certifying official that no liquids collection is at the well site. The claim must include a certification by a certifying official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(iv) For each well affected facility for which you claim an exception under § 60.5375b(a)(2), you must record: The latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983; the United States Well Number; the specific exception claimed; the starting date and ending date for the period the well operated under the exception; and an explanation of why the well meets the claimed exception.

(v) For each well affected facility required to comply with both § 60.5375b(a)(1) and (2), if you are using a digital photograph in lieu of the records required in paragraphs (c)(1)(i) through (iv) of this section, you must retain the records of the digital photograph as specified in § 60.5410b(a)(4).

(vi) For each well affected facility for which you make a claim that the well affected facility is not subject to the well completion standards according to § 60.5375b(g), you must maintain:

(A) A record of the analysis that was performed in order the make that claim, including but not limited to, GOR values for established leases and data from wells in the same basin and field;

(B) The latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983; the United States Well Number;

(C) A record of the claim signed by the certifying official. The claim must include a certification by a certifying official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(vii) For each well affected facility subject to § 60.5375b(f), a record of the well type (*i.e.,* wildcat well, delineation well, or low pressure well (as defined § 60.5430b)) and supporting inputs and calculations, if applicable.

(viii) For each well affected facility which makes a claim it meets the exemption at § 60.5375b(h), a record of the latitude and longitude of the well in decimal degrees to an accuracy and precision of five (5) decimals of a degree using North American Datum of 1983; the United States Well Number; the date and time of the onset of flowback following hydraulic fracturing or refracturing and a record of the claim that the well completion operation requirements of § 60.5375b(a)(1) through (3) were met.

(2) For each gas well liquids unloading operation at your well affected facility that is subject to § 60.5376b(a)(1) or (2), the records of each gas well liquids unloading operation conducted during the reporting period, including the information specified in paragraphs (c)(2)(i) through (iii) of this section, as applicable.

(i) For each gas well liquids unloading operation that complies with § 60.5376b(a)(1) by performing all liquids unloading events without venting of methane and VOC emissions to the atmosphere, comply with the recordkeeping requirements specified in paragraphs (c)(2)(i)(A) and (B) of this section.

(A) 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 VOC emissions and the non-venting methane and VOC gas well liquids unloading method used. If more than one non-venting method is used, you must maintain records of all the differing non-venting liquids unloading methods used at the well affected facility complying with § 60.5376b(a)(1).

(B) Number of events where unplanned emissions are vented to the atmosphere during a gas well liquids unloading operation where you complied with best management practices to minimize emissions to the maximum extent possible.

(ii) For each gas well liquids unloading operation that complies with § 60.5376b(b) and (c) best management practices, maintain records documenting information specified in paragraphs (c)(2)(ii)(A) through (D) of this section.

(A) Identification of each well affected facility that conducts liquids unloading during the reporting period that employs best management practices to minimize emissions to the maximum extent possible.

(B) Documentation of your best management practice plan developed under paragraph § 60.5376b(c). You may update your best management practice plan to include additional steps which meet the criteria in § 60.5376b(c).

(C) A log of each best management practice plan step taken to minimize emissions to the maximum extent possible for each gas well liquids unloading event.

(D) Documentation of each gas well liquids unloading event where deviations from your best management practice plan steps occurred, the date and time the deviation began, the duration of the deviation, documentation of best management practice plan steps not followed, and the steps taken in lieu of your best management practice plan steps during those events to minimize emissions to the maximum extent possible.

(iii) For each well affected facility that reduces methane and VOC emissions from well affected facility gas wells that unload liquids by 95.0 percent by routing emissions to a control device through closed vent system under § 60.5376b(g), you must maintain the records in paragraphs (c)(2)(iii)(A) through (E) of this section.

(A) If you comply with the emission reduction standard with a control device, the information for each control device in paragraph (c)(11) of this section.

(B) Records of the closed vent system inspection as specified paragraph (c)(8) of this section.

(C) Records of the cover inspections as specified in paragraph (c)(9) of this section.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(10) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(12) of this section.

(3) For each associated gas well, you must maintain the applicable records specified in paragraphs (c)(3)(i) or (ii) and (c)(3)(iv) of this section.

(i) For each associated gas well that complies with the requirements of § 60.5377b(a)(1), (2), (3), or (4), you must keep the records specified in paragraphs (c)(3)(i)(A) and (B).

(A) Documentation of the specific method(s) in § 60.5377b(a)(1), (2), (3), or (4) that is used.

(B) For instances where you temporarily route the associated gas to a flare or control device in accordance with § 60.5377b(d), you must keep the records specified in paragraphs (c)(3)(i)(B)(*1*) through (*3*).

(*1*) The reason in § 60.5377b(d)(1), (2), (3), or (4) for each incident.

(*2*) The date of each incident, along with the times when routing the associated gas to the flare or control device started and ended, along with the total duration of each incident.

(*3*) Documentation that all CVS requirements specified in § 60.5411b(a) and (c) and all applicable flare or control device requirements specified in § 60.5412b are met during each period when the associated gas is routed to the flare or control device.

(ii) For instances where you temporarily vent the associated gas in accordance with § 60.5377b(e), you must keep the records specified in paragraphs (c)(3)(ii)(A) through (D). These records are required if you are routinely complying with § 60.5377b(a) or § 60.5377b(f) or temporarily complying with § 60.5377b(d).

(A) The reason in § 60.5377b(e)(1), (2), or (3) for each incident.

(B) The date of each incident, along with the times when venting the associated gas started and ended, along with the total duration of each incident.

(C) The VOC and methane emissions that were emitted during each incident.

(D) The cumulative duration of venting incidents and VOC and methane emissions for all incidents in each calendar year.

(iii) For each associated gas well that complies with the requirements of § 60.5377b(f) because it has demonstrated that it is not feasible to comply with § 60.5377b(a)(1), (2), (3), and (4) due to technical reasons in accordance with § 60.5377b(g), records of each annual demonstration and certification of the technical reason that it is not feasible to comply with § 60.5377b(a)(1), (2), (3), and (4) in accordance with § 60.5377b(g).

(iv) For each associated gas well that complies with the requirements of § 60.5377b(f), meet the recordkeeping requirements specified in paragraphs (c)(3)(iv)(A) through (E).

(A) Identification of each instance when associated gas was vented and not routed to a control device that reduces VOC and methane emissions by at least 95.0 percent.

(B) If you comply with the emission reduction standard in § 60.5377b with a control device, the information for each control device in paragraphs (c)(11) and (13) of this section.

(C) Records of the closed vent system inspection as specified paragraph (c)(8) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must maintain records of the information specified in § 60.5424b.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(10) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(12) of this section.

(v) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(4) For each centrifugal compressor affected facility, you must maintain the records specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) For each centrifugal compressor affected facility, you must maintain records of deviations in cases where the centrifugal compressor was not operated in compliance with the requirements specified in § 60.5380b, including a description of each deviation, the date and time each deviation began and the duration of each deviation.

(ii) For each wet seal compressor complying with the emissions reduction standard in § 60.5380b(a)(1), you must maintain the records in paragraphs (c)(4)(ii)(A) through (E) of this section. For each wet seal compressor complying with the alternative standard in § 60.5380b(a)(3) by routing the closed vent system to a process, you must maintain the records in paragraphs (c)(4)(ii)(B) through (E) of this section.

(A) If you comply with the emission reduction standard in § 60.5380b(a)(1) with a control device, the information for each control device in paragraph (c)(11) of this section.

(B) Records of the closed vent system inspection as specified paragraph (c)(8) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must maintain the information specified in § 60.5424b.

(C) Records of the cover inspections as specified in paragraph (c)(9) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (c)(9) of this section, you must maintain the information specified in § 60.5424b.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(10) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(12) of this section.

(iii) For each centrifugal compressor affected facility using a self-contained wet seal compressor, centrifugal compressor equipped with sour seal oil separator and capture system, or dry seal compressor complying with the standard in § 60.5380b(a)(4), (5) or (6), you must maintain the records specified in paragraphs (c)(4)(iii)(A) through (H) of this section.

(A) Records of the cumulative number of hours of operation since initial startup, since May 7, 2024, or since the previous volumetric flow rate measurement, as applicable.

(B) A description of the method used and the results of the volumetric flow rate measurement or emissions screening, as applicable.

(C) Records for all flow meters, composition analyzers and pressure gauges used to measure volumetric flow rates as specified in paragraphs (c)(4)(iii)(C)(*1*) through (*6*).

(*1*) Description of standard method published by a consensus-based standards organization or industry standard practice.

(*2*) Records of volumetric flow rate emissions calculations conducted according to paragraphs § 60.5380b(a)(4) through (6), as applicable.

(*3*) Records of manufacturer's operating procedures and measurement methods.

(*4*) Records of manufacturer's recommended procedures or an appropriate industry consensus standard method for calibration and results of calibration, recalibration, and accuracy checks.

(*5*) Records which demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions. You must include the date of the demonstration, the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and

any supporting engineering calculations. If adjustments were made to the mathematical relationships, a record and description of such adjustments.

(*6*) Record of each initial calibration or a recalibration which failed to meet the required accuracy specification and the date of the successful recalibration.

(D) Date when performance-based volumetric flow rate is exceeded.

(E) The date of successful repair of the compressor seal, including follow-up performance-based volumetric flow rate measurement to confirm successful repair.

(F) Identification of each compressor seal placed on delay of repair and explanation for each delay of repair.

(G) For each compressor seal or part needed for repair placed on delay of repair because of replacement seal or part unavailability, the operator must document: the date the seal or part was added to the delay of repair list, the date the replacement seal or part was ordered, the anticipated seal or part delivery date (including any estimated shipment or delivery date provided by the vendor), and the actual arrival date of the seal or part.

(H) Date of planned shutdowns that occur while there are any seals or parts that have been placed on delay of repair.

(5) For each reciprocating compressor affected facility, you must maintain the records in paragraphs (c)(5)(i) through (x) and (c)(8) through (13) of this section, as applicable. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424b.

(i) For each reciprocating compressor affected facility, you must maintain records of deviations in cases where the reciprocating compressor was not operated in compliance with the requirements specified in § 60.5385b, including a description of each deviation, the date and time each deviation began and the duration of each deviation in hours.

(ii) Records of the date of installation of a rod packing emissions collection system and closed vent system as specified in § 60.5385b(d).

(iii) Records of the cumulative number of hours of operation since initial startup, since May 7, 2024, or since the previous volumetric flow rate measurement, as applicable. Alternatively, a record that emissions from the rod packing are being routed to a process through a closed vent system.

(iv) A description of the method used and the results of the volumetric flow rate measurement or emissions screening, as applicable.

(v) Records for all flow meters, composition analyzers and pressure gauges used to measure volumetric flow rates as specified in paragraphs (c)(5)(v)(A) through (F).

(A) Description of standard method published by a consensus-based standards organization or industry standard practice.

(B) Records of volumetric flow rate calculations conducted according to paragraphs § 60.5385b(b) or (c), as applicable.

(C) Records of manufacturer operating procedures and measurement methods.

(D) Records of manufacturer's recommended procedures or an appropriate industry consensus standard method for calibration and results of calibration, recalibration, and accuracy checks.

(E) Records which demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions. You must include the date of the demonstration, the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations. If adjustments were made to the mathematical relationships, a record and description of such adjustments.

(F) Record of each initial calibration or a recalibration which failed to meet the required accuracy specification and the date of the successful recalibration.

(vi) Date when performance-based volumetric flow rate is exceeded.

(vii) The date of successful replacement or repair of reciprocating compressor rod packing, including follow-up performance-based volumetric flow rate measurement to confirm successful repair.

(viii) Identification of each reciprocating compressor placed on delay of repair because of rod packing or part unavailability and explanation for each delay of repair.

(ix) For each reciprocating compressor that is placed on delay of repair because of replacement rod packing or part unavailability, the operator must document: the date the rod packing or part was added to the delay of repair list, the date the replacement rod packing or part was ordered, the anticipated rod packing or part delivery date (including any estimated shipment or delivery date provided by the vendor), and the actual arrival date of the rod packing or part.

(x) Date of planned shutdowns that occur while there are any reciprocating compressors that have been placed on delay of repair due to the unavailability of rod packing or parts to conduct repairs.

(6) For each process controller affected facility, you must maintain the records specified in paragraphs (c)(6)(i) through (vii) of this section.

(i) Records identifying each process controller that is driven by natural gas and that does not function as an emergency shutdown device.

(ii) For each process controller affected facility complying with § 60.5390b(a), you must maintain records of the information specified in paragraphs (c)(6)(ii)(A) and (B) of this section, as applicable.

(A) If you are complying with § 60.5390b(a) by routing process controller vapors to a process through a closed vent system, you must report the information specified in paragraphs (c)(6)(ii)(A)(*1*) and (*2*) of this section.

(*1*) An identification of all the natural gas-driven process controllers in the process controller affected facility for which you collect and route vapors to a process through a closed vent system.

(*2*) The records specified in paragraphs (c)(8), (10), and (12) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424b.

(B) If you are complying with § 60.5390b(a) by using a self-contained natural gas-driven process controller, you must report the information specified in paragraphs (c)(6)(ii)(B)(*1*) through (*3*) of this section.

(*1*) An identification of each process controller complying with § 60.5390b(a) by using a self-contained natural gas-driven process controller;

(*2*) Dates of each inspection required under § 60.5416b(b); and

(*3*) Each defect or leak identified during each natural gas-driven-self-contained process controller system inspection, and date of repair or date of anticipated repair if repair is delayed.

(iii) For each process controller affected facility complying with the § 60.5390b(b)(1) process controller bleed rate requirements, you must maintain records of the information specified in paragraphs (c)(6)(iii)(A) and (B) of this section.

(A) The identification of process controllers designed and operated to achieve a bleed rate less than or equal to 6 scfh and records of the

manufacturer's specifications indicating that the process controller is designed with a natural gas bleed rate of less than or equal to 6 scfh.

(B) Where necessary to meet a functional need, the identification of the process controller and demonstration of why it is necessary to use a process controller with a natural gas bleed rate greater than 6 scfh.

(iv) For each intermittent vent process controller in the affected facility complying with the requirements in paragraphs § 60.5390b(b)(2), you must keep records of the information specified in paragraphs (c)(6)(iv)(A) through (C) of this section.

(A) The identification of each intermittent vent process controller.

(B) Dates and results of the intermittent vent process controller monitoring required by § 60.5390b(b)(2)(ii).

(C) For each instance in which monitoring identifies emissions to the atmosphere from an intermittent vent controller during idle periods, the date of repair or replacement, or the date of anticipated repair or replacement if the repair or replacement is delayed and the date and results of the re-survey after repair or replacement.

(v) For each process controller affected facility complying with § 60.5390b(b)(3), you must maintain the records specified in paragraphs (c)(6)(v)(A) and (B) of this section.

(A) An identification of each process controller for which emissions are routed to a control device.

(B) Records specified in paragraphs (c)(8) and (c)(10) through (13) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424b.

(vi) Records of each change in compliance method, including identification of each natural gas-driven process controller which changes its method of compliance, the new method of compliance, and the date of the change in compliance method.

(vii) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(7) For each storage vessel affected facility, you must maintain the records identified in paragraphs (c)(7)(i) through (vii) of this section.

(i) You must maintain records of the identification and location in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983 of each storage vessel affected facility.

(ii) Records of each methane and VOC emissions determination for each storage vessel affected facility made under § 60.5365b(e) including identification of the model or calculation methodology used to calculate the methane and VOC emission rate.

(iii) For each instance where the storage vessel was not operated in compliance with the requirements specified in § 60.5395b a description of the deviation, the date and time each deviation began, and the duration of the deviation.

(iv) If complying with the emissions reduction standard in § 60.5395b(a)(2), you must maintain the records in paragraphs (c)(7)(iv)(A) through (E) of this section.

(A) If you comply with the emission reduction standard with a control device, the information for each control device in paragraphs (c)(11) and (13) of this section.

(B) Records of the closed vent system inspection as specified paragraph (c)(8) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424b.

(C) Records of the cover inspections as specified in paragraph (c)(9) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (c)(9) of this section, you must provide the information specified in § 60.5424b.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(10) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(12) of this section.

(v) For storage vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), records indicating the number of consecutive days that the vessel is located at a site in the crude oil and natural gas source category. If a storage vessel is removed from a site and, within 30 days, is either returned to the site or replaced by another storage vessel at the site to serve the same or similar function, then the entire period since the original storage vessel was first located at the site, including the days when the storage vessel was removed, will be added to the count towards the number of consecutive days.

(vi) Records of the date that each storage vessel affected facility or portion of a storage vessel affected facility is removed from service and returned to service, as applicable.

(vii) Records of the date that liquids from the well following fracturing or refracturing are routed to the storage vessel affected facility; or the date that you comply with paragraph § 60.5395b(a)(2), following a monthly emissions determination which indicates that VOC emissions from your storage vessel affected facility increase to 4 tpy or greater or methane emissions increase to 14 tpy or greater and the increase is not associated with fracturing or refracturing of a well feeding the storage vessel affected facility, and records of the methane and VOC emissions rate and the model or calculation methodology used to calculate the methane and VOC emission rate.

(8) Records of each closed vent system inspection required under § 60.5416b(a)(1) and (2) and (b) for your well, centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, and process unit equipment affected facility as required in paragraphs (c)(8)(i) through (iv) of this section.

(i) A record of each closed vent system inspection or no identifiable emissions monitoring survey. You must include an identification number for each closed vent system (or other unique identification description selected by you), the date of the inspection, and the method used to conduct the inspection (*i.e.,* visual, AVO, OGI, Method 21 of appendix A–7 to this part).

(ii) For each defect or emissions detected during inspections required by § 60.5416b(a)(1) and (2) or (b), you must record the location of the defect or emissions; a description of the defect; the maximum concentration reading obtained if using Method 21 of appendix A–7 to this part; the indication of emissions detected by AVO if using AVO; the date of detection; the date of each attempt to repair the emissions or defect; the corrective action taken during each attempt to repair the defect; and the date the repair to correct the defect or emissions is completed.

(iii) If repair of the defect is delayed as described in § 60.5416b(b)(6), you must record the reason for the delay and the date you expect to complete the repair.

(iv) Parts of the closed vent system designated as unsafe to inspect as described in § 60.5416b(b)(7) or difficult to inspect as described in § 60.5416b(b)(8), the reason for the designation, and written plan for

inspection of that part of the closed vent system.

(9) A record of each cover inspection required under § 60.5416b(a)(3) for your centrifugal compressor, reciprocating compressor, or storage vessel as required in paragraphs (c)(9)(i) through (iv) of this section.

(i) A record of each cover inspection. You must include an identification number for each cover (or other unique identification description selected by you), the date of the inspection, and the method used to conduct the inspection (*i.e.,* AVO, OGI, Method 21 of appendix A–7 to this part).

(ii) For each defect detected during the inspection you must record the location of the defect; a description of the defect, the date of detection, the maximum concentration reading obtained if using Method 21 of appendix A–7 to this part; the indication of emissions detected by AVO if using AVO; the date of each attempt to repair the defect; the corrective action taken during each attempt to repair the defect; and the date the repair to correct the defect is completed.

(iii) If repair of the defect is delayed as described in § 60.5416b(b)(6), you must record the reason for the delay and the date you expect to complete the repair.

(iv) Parts of the cover designated as unsafe to inspect as described in § 60.5416b(b)(7) or difficult to inspect as described in § 60.5416b(b)(8), the reason for the designation, and written plan for inspection of that part of the cover.

(10) For each bypass subject to the bypass requirements of § 60.5416b(a)(4), you must maintain a record of the following, as applicable: readings from the flow indicator; each inspection of the seal or closure mechanism; the date and time of each instance the key is checked out; date and time of each instance the alarm is sounded.

(11) Records for each control device used to comply with the emission reduction standard in § 60.5377b(d) or (f) for associated gas wells, § 60.5380b(a)(1) or (9) for centrifugal compressor affected facilities, § 60.5385b(d)(2) for reciprocating compressor affected facilities, § 60.5390b(b)(3) for your process controller affected facility in Alaska, § 60.5393b(b)(3) for your pump affected facility, § 60.5395b(a)(2) for your storage vessel affected facility, § 60.5376b(g) for well affected facility gas well liquids unloading, or § 60.5400b(f) or 60.5401b(e) for your process equipment affected facility, as required in paragraphs (c)(11)(i) through (viii) of this section. If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d), keep records of the information in paragraphs (c)(11)(ix) of this section, in lieu of the records required by paragraphs (c)(11)(i) through (iv) and (vi) through (viii) of this section.

(i) For a control device tested under § 60.5413b(d) which meets the criteria in § 60.5413b(d)(11) and (e), keep records of the information in paragraphs (c)(11)(i)(A) through (E) of this section, in addition to the records in paragraphs (c)(11)(ii) through (ix) of this section, as applicable.

(A) Serial number of purchased device and copy of purchase order.

(B) Location of the affected facility associated with the control device in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(C) Minimum and maximum inlet gas flow rate specified by the manufacturer.

(D) Records of the maintenance and repair log as specified in § 60.5413b(e)(4), for all inspection, repair, and maintenance activities for each control device failing the visible emissions test.

(E) Records of the manufacturer's written operating instructions, procedures, and maintenance schedule to ensure good air pollution control practices for minimizing emissions.

(ii) For all control devices, keep records of the information in paragraphs (c)(11)(ii)(A) through (G) of this section, as applicable.

(A) Make, model, and date of installation of the control device, and identification of the affected facility controlled by the device.

(B) Records of deviations in accordance with § 60.5417b(g)(1) through (7), including a description of the deviation, the date and time the deviation began, the duration of the deviation, and the cause of the deviation.

(C) The monitoring plan required by § 60.5417b(c)(2).

(D) Make and model number of each continuous parameter monitoring system.

(E) Records of minimum and maximum operating parameter values, continuous parameter monitoring system data (including records that the pilot or combustion flame is present at all times), calculated averages of continuous parameter monitoring system data, and results of all compliance calculations.

(F) Records of continuous parameter monitoring system equipment performance checks, system accuracy audits, performance evaluations, or other audit procedures and results of all inspections specified in the monitoring plan in accordance with § 60.5417b(c)(2). Records of calibration gas cylinders, if applicable.

(G) Periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities Records of repairs on the monitoring system.

(iii) For each carbon adsorption system, records of the schedule for carbon replacement as determined by the design analysis requirements of § 60.5413b(c)(2) and (3) and records of each carbon replacement as specified in § 60.5412b(c)(1) and § 60.5415b(f)(1)(viii).

(iv) For enclosed combustion devices and flares, records of visible emissions observations as specified in paragraph (c)(11)(iv)(A) or (B) of this section.

(A) Records of observations with Method 22 of appendix A–7 to this part, including observations required following return to operation from a maintenance or repair activity, which include: company, location, company representative (name of the person performing the observation), sky conditions, process unit (type of control device), clock start time, observation period duration (in minutes and seconds), accumulated emission time (in minutes and seconds), and clock end time. You may create your own form including the above information or use Figure 22–1 in Method 22 of appendix A–7 to this part.

(B) If you monitor visible emissions with a video surveillance camera, location of the camera and distance to emission source, records of the video surveillance output, and documentation that an operator looked at the feed daily, including the date and start time of observation, the length of observation, and length of time visible emissions were present.

(v) For enclosed combustion devices and flares, video of the OGI inspection conducted in accordance with § 60.5415b(f)(1)(x). Records documenting each enclosed combustion device and flare was visibly observed during each inspection conducted under § 60.5397b using AVO in accordance with § 60.5415b(f)(1)(x).

(vi) For enclosed combustion devices and flares, records of each demonstration of the NHV of the inlet gas to the enclosed combustion device or flare conducted in accordance with § 60.5417b(d)(8)(iii). For each re-evaluation of the NHV of the inlet gas,

records of process changes and explanation of the conditions that led to the need to re-evaluation the NHV of the inlet gas. For each demonstration, record information on whether the enclosed combustion device or flare has the potential to receive inert gases, and if so, the highest percentage of inert gases that can be sent to the enclosed combustion device or flare and the highest percent of inert gases sent to the enclosed combustion device or flare during the NHV demonstration. Records of periodic sampling conducted under § 60.5417b(d)(8)(iii)(G).

(vii) For enclosed combustion devices and flares, if you use a backpressure regulator valve, the make and model of the valve, date of installation, and record of inlet flow rating. Maintain records of the engineering evaluation and manufacturer specifications that identify the pressure set point corresponding to the minimum inlet gas flow rate, the annual confirmation that the backpressure regulator valve set point is correct and consistent with the engineering evaluation and manufacturer specifications, and the annual confirmation that the backpressure regulator valve fully closes when not in open position.

(viii) For enclosed combustion devices and flares, records of each demonstration required under § 60.5417b(d)(8)(iv).

(ix) If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412b(d), keep records of the information in paragraphs (c)(11)(ix)(A) through (H) of this section, in lieu of the records required by paragraphs (c)(11)(i) through (iv) and (c)(11)(vi) through (viii) of this section.

(A) An identification of the alternative test method used.

(B) Data recorded at the intervals required by the alternative test method.

(C) Monitoring plan required by § 60.5417(i)(2).

(D) Quality assurance and quality control activities conducted in accordance with the alternative test method.

(E) If required by § 60.5412b(d)(4) to conduct visible emissions observations, records required by paragraph (c)(11)(iv) of this section.

(F) If required by § 60.5412b(d)(5) to conduct pilot or combustion flame monitoring, record indicating the presence of a pilot or combustion flame and periods when the pilot or combustion flame is absent.

(G) For each instance where there is a deviation of the control device in accordance with § 60.5417b(i)(6)(i) through (v), the date and time the deviation began, the duration of the deviation in hours, and cause of the deviation.

(H) Any additional information required to be recorded as specified by the Administrator as part of the alternative test method approval under § 60.5412b(d).

(12) For each closed vent system routing to a control device or process, the records of the assessment conducted according to § 60.5411b(c):

(i) A copy of the assessment conducted according to § 60.5411b(c)(1); and

(ii) A copy of the certification according to § 60.5411b(c)(1)(i) and (ii).

(13) A copy of each performance test submitted under paragraphs (b)(12) or (13) of this section.

(14) For the fugitive emissions components affected facility, maintain the records identified in paragraphs (c)(14)(i) through (viii) of this section.

(i) The date of the startup of production or the date of the first day of production after modification for the fugitive emissions components affected facility at a well site and the date of startup or the date of modification for the fugitive emissions components affected facility at a compressor station.

(ii) For the fugitive emissions components affected facility at a well site, you must maintain records specifying what type of well site it is (*i.e.,* single wellhead only well site, small wellsite, multi-wellhead only well site, or a well site with major production and processing equipment.)

(iii) For the fugitive emissions components affected facility at a well site where you complete the removal of all major production and processing equipment such that the well site contains only one or more wellheads, record the date the well site completes the removal of all major production and processing equipment from the well site, and, if the well site is still producing, record the well ID or separate tank battery ID receiving the production from the well site. If major production and processing equipment is subsequently added back to the well site, record the date that the first piece of major production and processing equipment is added back to the well site.

(iv) The fugitive emissions monitoring plan as required in § 60.5397b(b), (c), and (d).

(v) The records of each monitoring survey as specified in paragraphs (c)(14)(v)(A) through (I) of this section.

(A) Date of the survey.

(B) Beginning and end time of the survey.

(C) Name of operator(s), training, and experience of the operator(s) performing the survey.

(D) Monitoring instrument or method used.

(E) Fugitive emissions component identification when Method 21 of appendix A–7 to this part is used to perform the monitoring survey.

(F) Ambient temperature, sky conditions, and maximum wind speed at the time of the survey. For compressor stations, operating mode of each compressor (*i.e.,* operating, standby pressurized, and not operating-depressurized modes) at the station at the time of the survey.

(G) Any deviations from the monitoring plan or a statement that there were no deviations from the monitoring plan.

(H) Records of calibrations for the instrument used during the monitoring survey.

(I) Documentation of each fugitive emission detected during the monitoring survey, including the information specified in paragraphs (c)(14)(v)(I)(*1*) through (*9*) of this section.

(*1*) Location of each fugitive emission identified.

(*2*) Type of fugitive emissions component, including designation as difficult-to-monitor or unsafe-to-monitor, if applicable.

(*3*) If Method 21 of appendix A–7 to this part is used for detection, record the component ID and instrument reading.

(*4*) For each repair that cannot be made during the monitoring survey when the fugitive emissions are initially found, a digital photograph or video must be taken of that component or the component must be tagged for identification purposes. The digital photograph must include the date that the photograph was taken and must clearly identify the component by location within the site (*e.g.,* the latitude and longitude of the component or by other descriptive landmarks visible in the picture). The digital photograph or identification (*e.g.,* tag) may be removed after the repair is completed, including verification of repair with the resurvey.

(*5*) The date of first attempt at repair of the fugitive emissions component(s).

(*6*) The date of successful repair of the fugitive emissions component, including the resurvey to verify repair and instrument used for the resurvey.

(*7*) Identification of each fugitive emission component placed on delay of repair and explanation for each delay of repair.

(*8*) For each fugitive emission component placed on delay of repair for reason of replacement component

unavailability, the operator must document: the date the component was added to the delay of repair list, the date the replacement fugitive component or part thereof was ordered, the anticipated component delivery date (including any estimated shipment or delivery date provided by the vendor), and the actual arrival date of the component.

(*9*) Date of planned shutdowns that occur while there are any components that have been placed on delay of repair.

(vi) For the fugitive emissions components affected facility complying with an alternative means of emissions limitation under § 60.5399b, you must maintain the records specified by the specific alternative fugitive emissions standard for a period of at least 5 years.

(vii) For well closure activities, you must maintain the information specified in paragraphs (c)(14)(vii)(A) through (G) of this section.

(A) The well closure plan developed in accordance with § 60.5397b(l) and the date the plan was submitted.

(B) The notification of the intent to close the well site and the date the notification was submitted.

(C) The date of the cessation of production from all wells at the well site.

(D) The date you began well closure activities at the well site.

(E) Each status report for the well closure activities reported in paragraph (b)(9)(iv)(A) of this section.

(F) Each OGI survey reported in paragraph (b)(9)(iv)(B) of this section including the date, the monitoring instrument used, and the results of the survey or resurvey.

(G) The final OGI survey video demonstrating the closure of all wells at the site. The video must include the date that the video was taken and must identify the well site location by latitude and longitude.

(viii) If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraphs (c)(14)(iv) and (v) of this section, you must maintain the records specified in § 60.5424b.

(15) For each pump affected facility, you must maintain the records identified in paragraphs (c)(15)(i) through (ix) of this section.

(i) Identification of each pump that is driven by natural gas and that is in operation 90 days or more per calendar year.

(ii) If you are complying with § 60.5393b(a) or (b)(1) by routing pump vapors to a process through a closed vent system, identification of all the pumps in the pump affected facility for which you collect and route vapors to a process through a closed vent system and the records specified in paragraphs (c)(8), (10), and (12) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424b.

(iii) If you are complying with § 60.5393b(b)(1) by routing pump vapors to control device achieving a 95.0 percent reduction in methane and VOC emissions, you must keep the records specified in paragraphs (c)(8) and (10) through (c)(13) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398b, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424b.

(iv) If you are complying with § 60.5393b(b)(5) by routing pump vapors to control device achieving less than a 95.0 percent reduction in methane and VOC emissions, you must maintain records of the certification that there is a control device on site but it does not achieve a 95.0 percent emissions reduction and a record of the design evaluation or manufacturer's specifications which indicate the percentage reduction the control device is designed to achieve.

(v) If you have less than three natural gas-driven diaphragm pumps in the pump affected facility, and you do not have a vapor recovery unit or control device installed on site by the compliance date, you must retain a record of your certification required under § 60.5393b(b)(6), certifying that there is no vapor recovery unit or control device on site. If you subsequently install a control device or vapor recovery unit, you must maintain the records required under paragraph (c)(15)(ii) and paragraph (c)(15)(iii) or (iv) of this section, as applicable.

(vi) If you determine, through an engineering assessment, that it is technically infeasible to route the pump affected facility emissions to a process or control device, you must retain records of your demonstration and certification that it is technically infeasible as required under § 60.5393b(b)(5).

(vii) If the pump is routed to a control device that is subsequently removed from the location or is no longer available such that there is no option to route to a control device, you are required to retain records of this change and the records required under paragraph (c)(15)(vi) of this section.

(viii) Records of each change in compliance method, including identification of each natural gas-driven pump which changes its method of compliance, the new method of compliance, and the date of the change in compliance method.

(ix) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(d) *Electronic reporting.* If you are required to submit notifications or reports following the procedure specified in this paragraph (d), you must submit notifications or reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report or notification, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (d)(1) and (2) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (d).

* * * * *

■ 31. Amend § 60.5421b by:

■ a. Revising and republishing the introductory text and paragraph (b) introductory text; and

■ b. Redesignating (b)(11)(vi) introductory text as (b)(11)(iv) introductory text and revising it.

The revisions read as follows:

§ 60.5421b What are my additional recordkeeping requirements for process unit equipment affected facilities?

You must maintain a record of each equipment leak monitoring inspection and each leak identified under § 60.5400b and § 60.5401b as specified

in paragraphs (b)(1) through (17) of this section. The record must be maintained either onsite or at the nearest local field office for at least 5 years. Any records required to be maintained that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

(b) You must maintain the monitoring inspection records specified in paragraphs (b)(1) through (17) of this section.

* * * * *

(11) * * *

(iv) The date of successful repair of the leak and the method of monitoring used to confirm the repair, as specified in paragraph (b)(11)(iv)(A) through (C) of this section.

* * * * *

■ 32. Amend § 60.5424b by revising paragraph (e)(6) to read as follows:

§ 60.5424b What are my additional recordkeeping and reporting requirements if I comply with the alternative GHG and VOC standards for fugitive emissions components affected facilities and covers and closed vent systems?

* * * * *

(e) * * *

(6) Each rolling 12-month average operational downtime for the system, calculated in accordance with § 60.5398b(c)(1)(iv)(D).

* * * * *

■ 33. Amend § 60.5430b by revising the definitions for *No identifiable emissions* and *Storage vessel* to read as follows:

§ 60.5430b What definitions apply to this subpart?

* * * * *

No identifiable emissions means, for the purposes of covers, closed vent systems, and self-contained natural gas-driven process controllers and as determined according to the provisions of § 60.5416b, 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 Method 21 of appendix A–7 to this part when inspections are conducted with Method 21.

* * * * *

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. A well completion vessel that receives recovered liquids from a well after startup of production following flowback for a period which exceeds 60 days is considered a storage vessel under this subpart. A tank or other vessel shall not be considered a storage vessel if it has been removed from service in accordance with the requirements of § 60.5395b(c)(1) until such time as such tank or other vessel has been returned to service. For the purposes of this subpart, the following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420b(c)(7)(v), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel from the date the original vessel was first located at the site. This exclusion does not apply to a well completion vessel as described above.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

* * * * *

■ 34. Revise table 3 to subpart OOOOb of part 60 to read as follows:

TABLE 3 TO SUBPART OOOOb OF PART 60—REQUIRED MINIMUM INITIAL SO_2 EMISSION REDUCTION EFFICIENCY (Z_i)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	$2.0 \le X \le 5.0$	$5.0 < X \le 15.0$	$15.0 < X \le 300.0$	$X > 300.0$
$Y \ge 50$	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 99.9, whichever is smaller.		
$20 \le Y < 50$	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 97.9, whichever is smaller		97.9
$10 \le Y < 20$	79.0	$88.51X^{0.0101}Y^{0.0125}$ or 93.5, whichever is smaller	93.5	93.5
$Y < 10$	79.0	79.0	79.0	79.0

■ 35. Revise table 4 to subpart OOOOb of part 60 to read as follows:

TABLE 4 TO SUBPART OOOOb OF PART 60—REQUIRED MINIMUM SO_2 EMISSION REDUCTION EFFICIENCY (Z_c)

H_2S content of acid gas (Y), %	Sulfur feed rate (X), LT/D			
	$2.0 \le X \le 5.0$	$5.0 < X \le 15.0$	$15.0 < X \le 300.0$	$X > 300.0$
$Y \ge 50$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 99.9, whichever is smaller.		
$20 \le Y < 50$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 97.5, whichever is smaller		97.5
$10 \le Y < 20$	74.0	$85.35X^{0.0144}Y^{0.0128}$ or 90.8, whichever is smaller	90.8	90.8
$Y < 10$	74.0	74.0	74.0	74.0

■ 36. Amend table 5 to subpart OOOOb of part 60 by revising the entry for ''§ 60.8'' to read as follows:

TABLE 5 TO SUBPART OOOOb OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOOb

General provisions citation	Subject of citation	Applies to subpart?	Explanation
*	*	*	* * *
§ 60.8	Performance tests	Yes	Except that the format and submittal of performance test reports is described in § 60.5420b(b) and (d). Performance testing is required for control devices used on storage vessels, centrifugal compressors, wells, reciprocating compressors, process controllers, and pumps, as applicable, except that performance testing is not required for a control device used solely on pump(s).
*	*	*	* * *

Subpart OOOOc —Emissions Guidelines for Greenhouse Gas Emissions from Existing Crude Oil and Natural Gas Facilities

■ 37. Amend § 60.5370c by revising paragraph (b) to read as follows:

§ 60.5370c What compliance schedule must I include in my state or Tribal plan?

* * * * *

(b) The plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities, as specified in §§ 60.5379c through 60.5381c.

■ 38. Amend § 60.5374c by revising paragraph (b) to read as follows:

§ 60.5374c Does this subpart directly affect designated facility owners and operators in my state?

* * * * *

(b) If you do not submit a plan to implement and enforce the guidelines contained in this subpart by the date 24 months after promulgation of this subpart, or if EPA disapproves your plan, the EPA will implement and enforce a Federal plan, as provided in § 60.5368c of this subpart, to ensure that each designated facility within your state that commenced construction, modification or reconstruction on or before December 6, 2022, reaches compliance with all the provisions of this subpart by the dates specified in § 60.5360c of this subpart.

■ 39. Amend § 60.5375c by revising paragraph (a)(3) to read as follows:

§ 60.5375c What designated facilities must I address in my state or Tribal plan?

(a) * * *

(3) Designated facilities not exempt under § 60.14(e).

* * * * *

■ 40. Amend § 60.5386c by revising paragraph (e)(2)(i)(C) to read as follows:

§ 60.5386c Am I subject to this subpart?

* * * * *

(e) * * *

(2) * * *

(i) * * *

(C) Established parametric limits for the production and/or operational limit(s) in paragraph (e)(2)(i)(A), 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;

* * * * *

■ 41. Amend § 60.5388c by:

■ a. Revising paragraphs (a)(1) and (2);

■ b. Removing paragraph (a)(3);

■ c. Redesignating paragraph (a)(4) as paragraph (a)(3); and

■ d. Revising paragraph (b)(1)(v).

The revisions read as follows:

§ 60.5388c What standards apply to super-emitter events?

* * * * *

(a) * * *

(1) If you do not own or operate an oil and natural gas facility within 50 meters from the latitude and longitude provided in the notification subject to the regulation under this subpart, report this result to the EPA under paragraph (b) of this section. Your super-emitter event investigation is deemed complete under this subpart.

(2) If you own or operate an oil and natural gas facility within 50 meters from the latitude and longitude provided in the notification, and there is a designated facility or associated equipment subject to this subpart onsite, you must investigate to determine the source of the super-emitter event in accordance with this paragraph (a) and report the results in accordance with paragraph (b) of this section. The investigation required by this paragraph (a)(2) of this section may include but is not limited to the actions specified below in paragraphs (a)(2)(i) through (v) of this section.

(i) Review any maintenance activities (*e.g.,* liquids unloading) or process activities from the designated facilities subject to regulation under this subpart, starting from the date of detection of the super-emitter event as identified in the notification, until the date of investigation, to determine if the activities indicate any potential source(s) of the super-emitter event emissions.

(ii) Review all monitoring data from control devices (*e.g.,* flares) from the designated facilities subject to regulation under this subpart from the initial date of detection of the super-emitter event as identified in the notification, until the date of receiving the notification from the EPA to identify malfunctions of control devices or periods when the control devices were not in compliance with applicable requirements and that indicate a potential source of the super-emitter event emissions.

(iii) If you conducted a fugitive emissions survey or periodic screening event in accordance with § 60.5397c or § 60.5398c(b) between the initial date of detection of the super-emitter event as identified in the notification and the date the notification from the EPA was received, review the results of the survey to identify any potential source(s) of the super-emitter event emissions.

(iv) If you use conduct continuous monitoring with advanced methane detection technology in accordance with § 60.5398c(c), review the monitoring data collected on or after the initial date of detection of the super-emitter event

as identified in the notification, until the date of receiving the notification from the EPA.

(v) Screen the entire well site, centralized production facility, or compressor station with OGI, Method 21 of appendix A–7 to this part, or an alternative test method(s) approved per § 60.5398c(d), to determine if a super-emitter event is present

* * * * *

(b) * * *

(1) * * *

(v) Indication of whether you were able to identify the source of the super-emitter event. If you indicate you were unable to identify the source of the super-emitter event, you must certify that all applicable investigations specified in paragraphs (a)(2)(i) through (v) of this section have been conducted for all designated facilities and associated equipment subject to regulation under this subpart that are at this oil and natural gas facility, and you have determined that the designated facilities and associated equipment are not the source of the super-emitter event. If you indicate that you were not able to identify the source of the super-emitter event, you are not required to report the information in paragraphs (b)(1)(vi) through (viii) of this section.

* * * * *

■ 42. Amend § 60.5390c by:

■ a. Revising and republishing paragraph (a)(1) introductory text; and

■ b. Redesignating paragraphs (a)(1)(A) and (B) as paragraphs (a)(1)(i) and (ii).

The revision reads as follows:

§ 60.5390c What GHG standards apply to gas well liquids unloading operations at well designated facilities?

(a) * * *

(1) If a gas well liquids unloading operation technology or technique employed does not result in venting of methane emissions to the atmosphere, you must comply with the requirements specified in paragraphs (a)(1)(i) and (ii) and (d) and (e) of this section. If an unplanned venting event occurs, you must meet the requirements specified in paragraphs (c) through (f) of this section.

* * * * *

■ 43. Amend § 60.5391c by revising and republishing paragraphs (b) through (e) and (g) and (h) to read as follows:

§ 60.5391c What GHG standards apply to associated gas wells at well designated facilities?

* * * * *

(b) If you meet one of the conditions in paragraphs (b)(1) or (2) of this section, you may route the associated gas to a control device that reduces methane emissions by at least 95.0 percent instead of complying with paragraph (a) of this section. The associated gas must be routed through a closed vent system that meets the requirements of § 60.5411c(a) and (c) and the control device must meet the conditions specified in § 60.5412c(a), (b), and (c).

(1) If the annual methane contained in the associated gas from your oil well is 40 tons per year or less at the initial compliance date, determined in accordance with paragraph (e) of this section.

(2) If you demonstrate and certify that it is not feasible to comply with paragraph (a)(1), (2), (3), and (4) of this section due to technical reasons by providing a detailed analysis documenting and certifying the technical reasons for this infeasibility in accordance with paragraphs (b)(2)(i) through (iv) of this section.

(i) In order to demonstrate that it is not feasible to comply with paragraph (a)(1), (2), (3), and (4) of this section, you must provide a detailed analysis documenting and certifying the technical reasons for this infeasibility. The demonstration must address the technical infeasibility for all options identified in (a)(1), (2), (3), and (4) of this section. Documentation of these demonstrations must be maintained in accordance with § 60.5420c(c)(2)(iv).

(ii) This demonstration must be certified by a professional engineer or another qualified individual with expertise in the uses of associated gas. The following certification, signed and dated by the qualified professional engineer or other qualified individual shall state: ''I certify that the assessment of technical and safety infeasibility was prepared under my direction or supervision. I further certify that the assessment was conducted, and this report was prepared pursuant to the requirements of § 60.5391c(b)(2). Based on my professional knowledge and experience, and inquiry of personnel involved in the assessment, the certification submitted herein is true, accurate, and complete.''

(iii) This demonstration and certification are valid for no more than 12 months. You must re-analyze the feasibility of complying with paragraphs (a)(1), (2), (3), and (4) of this section and finalize a new demonstration and certification each year.

(iv) Documentation of these demonstrations, along with the certifications, must be maintained in accordance with § 60.5420c(c)(2)(iv) and submitted in annual reports in accordance with § 60.5420c(b)(3).

(c) If you are complying with paragraph (a) of this section, you may temporarily route the associated gas to a flare or control device in the situations and for the durations identified in paragraphs (c)(1), (2), (3), or (4) of this section. The associated gas must be routed through a closed vent system that meets the requirements of § 60.5411c(a) and (c) and the control device must meet the conditions specified in § 60.5412c. If you are routing to a flare, you must demonstrate that the § 60.18 flare requirements are met during the period when the associated gas is routed to the flare. Records must be kept of all temporary flaring instances in accordance with § 60.5420c(c)(2) and reported in the annual report in accordance with § 60.5420c(b)(3).

(1) For equal to or less than 24 hours during a deviation caused by malfunction causing the need to flare.

(2) For equal to or less than 24 hours during repair, maintenance including blow downs, a bradenhead test, a packer leakage test, a production test, or commissioning.

(3) For wells complying with paragraph (a)(1) of this section, for the duration of a temporary interruption in service from the gathering or pipeline system, or 30 days, whichever is less.

(4) For 72 hours from the time that the associated gas does not meet pipeline specifications, or until the associated gas meets pipeline specifications, whichever is less.

(d) If you are complying with paragraph (a), (b), or (c) of this section, you may vent the associated gas in the situations and for the durations identified in paragraphs (d)(1), (2), or (3) of this section. Records must be kept of all venting instances in accordance with § 60.5420c(c)(2) and reported in the annual report in accordance with § 60.5420c(b)(3).

(1) For up to 12 hours to protect the safety of personnel.

(2) For up to 30 minutes during bradenhead monitoring.

(3) For up to 30 minutes during a packer leakage test.

(e) Calculate the methane content in associated gas as specified in paragraph (e)(1) of this section and comply with paragraphs (e)(2) and (e)(3) of this section.

(1) Calculate the methane content in associated gas from your oil well using the following equation

Equation 1 to Paragraph (e)(1)

Equation 1 to Paragraph (e)(1)

$$AG_{methane} = \frac{(GOR \times V \times M_{methane} \times 0.0192)}{907.2}$$

Where:

$AG_{methane}$ = Amount of methane in associated gas from the oil well, tons methane per year

GOR = Gas to oil ratio for the well in standard cubic feet of gas per barrel of oil; oil here refers to hydrocarbon liquids produced of all API gravities. GOR is to be determined for the well using available data, an appropriate standard method published by a consensus-based standards organization which include, but are not limited to, the following: ASTM International, the American National Standards Institute (ANSI), the American Gas Association (AGA), the American Society of Mechanical Engineers (ASME), the American Petroleum Institute (API), and the North American Energy Standards Board (NAESB), or in industry standard practice.

V = Volume of oil produced in the calendar year preceding the initial compliance date, in barrels per year.

$M_{methane}$ = mole fraction of methane in the associated gas.

0.0192 = density of methane gas at 60 °F and 14.7 psia in kilograms per cubic foot

907.2 = conversion of kilograms to tons, kilograms per ton

(2) You must maintain records of the calculation of the methane in associated gas from your oil well results in accordance with § 60.5420c(c)(2), and submit the information, as well as the background information, in the next annual report in accordance with § 60.5420c(b)(3).

(3) If a process change occurs that could increase the methane content in the associated gas, you must recalculate the methane content in accordance with paragraph (e)(1) of this section.

* * * * *

(g) You must demonstrate continuous compliance with the standards that apply to associated gas wells at well designated facilities as required by § 60.5415c(b).

(h) You must perform the recordkeeping and reporting as required by § 60.5420c(b)(1), (3), and (10) through (12), as applicable, and § 60.5420c(c)(2) and (7) and (9) through (12), as applicable.

■ 44. Amend § 60.5392c by revising paragraph (a) introductory text to read as follows:

§ 60.5392c What GHG standards apply to centrifugal compressor designated facilities?

* * * * *

(a) Each centrifugal compressor designated facility that is a wet or dry seal centrifugal compressor must comply with the GHG standards, using volumetric flow rate as a surrogate, as specified in paragraphs (a)(1) and (2) of this section. Alternatively, you have the option of complying with the GHG standards for your wet seal and dry seal centrifugal compressor by meeting the requirements specified in paragraph (a)(3), and either paragraph (a)(4) or (5) of this section.

* * * * *

■ 45. Amend § 60.5393c by revising and republishing paragraph (g) to read as follows:

§ 60.5393c What GHG standards apply to reciprocating compressor designated facilities?

* * * * *

(g) You must perform the reporting requirements as specified in § 60.5420c(b)(1) and (5) and (10) through (12), as applicable; and the recordkeeping requirements as specified in § 60.5420c(c)(4) and (7) through (12), as applicable.

■ 46. Amend § 60.5394c by revising paragraph (b)(3) to read as follows:

§ 60.5394c What GHG standards apply to process controller designated facilities?

* * * * *

(b) * * *

(3) You must reduce methane emissions from all controllers in the process controller designated facility by 95.0 percent. You must route emissions to a control device through a closed vent system that meets the conditions specified in § 60.5412c.

* * * * *

■ 47. Amend § 60.5395c by revising paragraphs (b)(6)(ii) and (b)(7)(iii) to read as follows:

§ 60.5395c What GHG standards apply to pump designated facilities?

* * * * *

(b) * * *

(6) * * *

(ii) You must maintain the records in § 60.5420c(c)(14)(ii) and (v), as applicable. You are no longer required to maintain the records in § 60.5420c(c)(14)(v) certifying that there is no vapor recovery unit or control device on site.

(7) * * *

(iii) The following certification, signed and dated by the qualified professional engineer or in-house engineer, must state: ''I certify that the assessment of technical infeasibility was prepared under my direction or supervision. I further certify that the assessment was conducted and this report was prepared pursuant to the requirements of § 60.5395c(b)(7)(ii). Based on my professional knowledge and experience, and inquiry of personnel involved in the assessment, the certification submitted herein is true, accurate, and complete.''

* * * * *

■ 48. Amend § 60.5396c by revising paragraphs (a)(3) introductory text, (c)(1)(ii), and (c)(4) to read as follows:

§ 60.5396c What GHG standards apply to storage vessel designated facilities?

* * * * *

(a) * * *

(3) Maintain the uncontrolled actual methane emissions from the storage vessel designated facility at less than 14 tpy without considering control in accordance with paragraphs (a)(3)(i) and (ii) of this section. Prior to using the uncontrolled actual methane emission rates for compliance purposes, you must demonstrate that the uncontrolled actual methane emissions have remained less than 14 tpy as determined monthly for 12 consecutive months. After such demonstration, you must determine the uncontrolled actual rolling 12-month determination methane emissions rates each month. The uncontrolled actual methane emissions must be calculated using a generally accepted model or calculation methodology which account for flashing, working, and breathing losses, and the calculations must be based on the actual average throughput, temperature, and separator pressure for the month. You may no longer comply with this paragraph and must instead comply with paragraph (a)(2) of this section if your storage vessel designated facility meets the conditions specified in paragraphs (a)(3)(i) or (ii) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) You must submit a notification as required in § 60.5420c(b)(7)(vii) in your next annual report, identifying each storage vessel designated facility removed from service during the

reporting period and the date of its removal from service.

* * * * *

(4) For each storage vessel designated facility or portion of a storage vessel designated facility returned to service during the reporting period, you must submit a notification in your next annual report as required in § 60.5420c(b)(7)(viii), identifying each storage vessel designated facility or portion of a storage vessel designated facility and the date of its return to service.

* * * * *

■ 49. Amend § 60.5398c by revising and republishing paragraphs (b) and (c)(5)(ii) to read as follows:

§ 60.5398c What alternative GHG standards apply to fugitive emissions components designated facilities and what inspection and monitoring requirements apply to covers and closed vent systems when using an alternative technology?

* * * * *

(b) *Periodic screening.* You may choose to demonstrate compliance for your fugitive emissions components designated facility and compliance with continuous inspection and monitoring requirements for your covers and closed vent systems through periodic screenings using any methane measurement technology approved in accordance with § 60.5398b(d). If you choose to demonstrate compliance using periodic screenings, you must comply with the requirements in paragraphs (b)(1) through (5) of this section and comply with the recordkeeping and reporting requirements in § 60.5424c.

(1) You must use one or more alternative test method(s) approved per § 60.5398b(d) to conduct periodic screenings.

(i) The required frequencies for conducting periodic screenings are listed in tables 2 and 3 to this subpart. You must choose the appropriate frequency for conducting periodic screenings based on the minimum aggregate detection threshold of the method used to conduct the periodic screenings. You must also use tables 2 and 3 to this subpart to determine whether you must conduct an annual fugitive emissions survey using OGI, except as provided in paragraph (b)(1)(ii) of this section.

(ii) Use of table 2 or 3 to this subpart is based on the required frequency for conducting monitoring surveys in § 60.5397c(g)(1)(i) through (v).

(iii) You may replace one or more individual periodic screening events required by table 2 or 3 to this subpart with an OGI survey. The OGI survey must be conducted according to the requirements outlined in § 60.5397c.

(iv) If you use multiple methods to conduct periodic screenings, you must conduct all periodic screenings, regardless of the method used for the individual periodic screening event, at the frequency required for the alternative test method with the highest aggregate detection threshold (*e.g.,* if you use methods with aggregate detection thresholds of 15 kg/hr, your periodic screenings must be conducted monthly). You must also conduct an annual OGI survey if an annual OGI survey is required for the alternative test method with the highest aggregate detection threshold.

(2) You must develop a monitoring plan that covers the collection of fugitive emissions components, covers, and closed vent systems at each site where you will use periodic screenings to demonstrate compliance. You may develop a site-specific monitoring plan, or you may include multiple sites that you own or operate in one plan. At a minimum, the monitoring plan must contain the information specified in paragraphs (b)(2)(i) through (ix) of this section.

(i) Identification of each site that will be monitored through periodic screening, including latitude and longitude coordinates of the site in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum of 1983.

(ii) Identification of the alternative test method(s) approved per § 60.5398b(d) that will be used for periodic screenings and the spatial resolution (*i.e.,* component-level, area-level, or facility-level) of the technology used for each method.

(iii) Identification of and contact information for the entities that will be performing the periodic screenings.

(iv) Required frequency for conducting periodic screenings, based on the criteria outlined in paragraph (b)(1) of this section.

(v) If you are required to conduct an annual OGI survey by paragraph (b)(1)(i) or (iii) of this section or you choose to replace any individual screening event with an OGI survey, your monitoring plan must also include the information required by § 60.5397c(b).

(vi) Procedures for conducting monitoring surveys required by paragraphs (b)(5)(ii)(A), (b)(5)(iii)(A), and (b)(5)(iv)(A) of this section. At a minimum, your monitoring plan must include the information required by § 60.5397c(c)(2), (3), (7), and (8) and § 60.5397c(d), as applicable. The provisions of § 60.5397c(d)(3) do not apply for purposes of conducting monitoring surveys required by paragraphs (b)(5)(ii) through (iv) of this section.

(vii) Procedures and timeframes for identifying and repairing fugitive emissions components, covers, and closed vent systems from which emissions are detected.

(viii) Procedures and timeframes for verifying repairs for fugitive emissions components, covers, and closed vent systems.

(ix) Records that will be kept and the length of time records will be kept.

(3) You must conduct the initial screening of your site according to the timeframes specified in (b)(3)(i) and (ii) of this section.

(i) Within 90 days of the effective date of your state or Tribal plan for each fugitive emissions components designated facility and storage vessel designated facility located at a well site.

(ii) No later than the final date by which the next monitoring survey required by § 60.5397c(g)(1)(i) through (v) would have been required to be conducted if you were previously complying with the requirements in § 60.5397c and § 60.5416c.

(4) If you are required to conduct an annual OGI survey by paragraph (b)(1)(i) or (iii) of this section, you must conduct OGI surveys according to the schedule in paragraphs (b)(4)(i) through (iv) of this section.

(i) You must conduct the initial OGI survey no later than 12 calendar months after conducting the initial screening survey in paragraph (b)(3) of this section.

(ii) Each subsequent OGI survey must be conducted no later than 12 calendar months after the previous OGI survey was conducted. Each identified source of fugitive emissions during the OGI survey shall be repaired in accordance with § 60.5397c(h).

(iii) If you replace a periodic screening event with an OGI survey or you are required to conduct a monitoring survey in accordance with paragraph (b)(5)(ii)(A) of this section prior to the date that your next OGI survey under paragraph (b)(4)(ii) of this section is due, the OGI survey conducted in lieu of the periodic screening event or the monitoring survey under paragraph (b)(5)(ii)(A) of this section can be used to fulfill the requirements of paragraph (b)(4)(ii) of this section. The next OGI survey is required to be conducted no later than 12 calendar months after the date of the survey conducted under paragraph (b)(1)(iv) or (b)(5)(ii)(A) of this section.

(iv) You cannot use a monitoring survey conducted under paragraph

(b)(5)(iii)(A) or (b)(5)(iv)(A) of this section to fulfill the requirements of paragraph (b)(4)(ii) of this section unless the monitoring survey included all fugitive emission components at the site.

(5) You must investigate confirmed detections of emissions from periodic screening events and repair each identified source of emissions in accordance with paragraphs (b)(5)(i) through (vi) of this section.

(i) You must receive the results of the periodic screening no later than 5 calendar days after the screening event occurs.

(ii) If you use an alternative test method with a facility-level spatial resolution to conduct a periodic screening event and the results of the periodic screening event indicate a confirmed detection of emissions from a designated facility, you must take the actions listed in paragraphs (b)(5)(ii)(A) through (C) of this section.

(A) You must conduct a monitoring survey of all the fugitive emissions components in a designated facility using either OGI or EPA Method 21 to appendix A–7 of this part. You must follow the procedures in your monitoring plan when conducting the survey.

(B) You must inspect all covers and closed vent system(s) with OGI or Method 21 of appendix A–7 to this part in accordance with the requirements in § 60.5416c(b)(1) through (4), as applicable.

(C) You must conduct a visual inspection of all covers and closed vent systems to identify if there are any defects, as defined in § 60.5416c(a)(1)(ii), § 60.5416c(a)(2)(iii), or § 60.5416c(a)(3)(i), as applicable.

(iii) If you use an alternative test method with an area-level spatial resolution to conduct a periodic screening event and the results of the periodic screening event indicate a confirmed detection of emissions from a designated facility, you must take the actions listed in paragraphs (b)(5)(iii)(A) and (B) of this section, as applicable.

(A) You must conduct a monitoring survey of all the fugitive emissions components located within a 4-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of this part. You must follow the procedures in your monitoring plan when conducting the survey.

(B) If the confirmed detection occurred in the portion of a site that contains a storage vessel or a closed vent system, you must inspect all covers and all closed vent systems that are connected to all storage vessels and closed vent systems that are within a 2-meter radius of the location of the periodic screening's confirmed detection (*i.e.,* you must inspect the whole system that is connected to the portion of the system in the radius of the detected event, not just the portion of the system that falls within the radius of the detected event).

(*1*) You must inspect the cover(s) and closed vent system(s) with OGI or Method 21 of appendix A–7 to this part in accordance with the requirements in § 60.5416c(b)(1) through (4), as applicable.

(*2*) You must conduct a visual inspection of the closed vent system(s) and cover(s) to identify if there are any defects, as defined in § 60.5416c(a)(1)(ii), § 60.5416c(a)(2)(iii), or § 60.5416c(a)(3)(i), as applicable.

(iv) If you use an alternative test method with a component-level spatial resolution to conduct a periodic screening event and the results of the periodic screening event indicate a confirmed detection of emissions from a designated facility, you must take the actions listed in paragraphs (b)(5)(iv)(A) and (B) of this section, as applicable.

(A) You must conduct a monitoring survey of all the fugitive emissions components located within a 1-meter radius of the location of the periodic screening's confirmed detection using either OGI or EPA Method 21 to appendix A–7 of this part. You must follow the procedures in your monitoring plan when conducting the survey.

(B) If the confirmed detection occurred in the portion of a site that contains a storage vessel or a closed vent system, you must inspect all covers and all closed vent systems that are connected to all storage vessels and closed vent systems that are within a 0.5-meter radius of the location of the periodic screening's confirmed detection (*i.e.,* you must inspect the whole system that is connected to the portion of the system in the radius of the detected event, not just the portion of the system that falls within the radius of the detected event).

(*1*) You must inspect the cover(s) and closed vent system(s) with OGI or Method 21 of appendix A–7 to this part in accordance with the requirements in § 60.5416c(b)(1) through (4), as applicable.

(*2*) You must conduct a visual inspection of the closed vent system(s) and cover(s) to identify if there are any defects, as defined in § 60.5416c(a)(1)(ii), § 60.5416c(a)(2)(iii), or § 60.5416c(a)(3)(i), as applicable.

(v) You must repair all sources of fugitive emissions in accordance with § 60.5397c(h) and all emissions or defects of covers and closed vent systems in accordance with § 60.5416c(b)(4), except as specified in this paragraph (b)(5)(v). Except as allowed by §§ 60.5397c(h)(3) and 60.5416c(b)(5), all repairs must be completed, including the resurvey verifying the repair, within 30 days of receiving the results of the periodic screening in paragraph (b)(5)(i) of this section.

(vi) If the results of the periodic screening event in paragraph (b)(5)(i) of this section indicate a confirmed detection at a designated facility, and the ground-based monitoring survey and inspections required by paragraphs (b)(5)(ii) through (iv) of this section demonstrate the confirmed detection was caused by a failure of a control device used to demonstrate continuous compliance under this subpart, you must initiate an investigative analysis to determine the underlying primary and other contributing cause(s) of such failure within 24 hours of receiving the results of the monitoring survey and/or inspection. As part of the investigation, you must determine if the control device is operating in compliance with the applicable requirements of §§ 60.5415c and 60.5417c, and if not, what actions are necessary to bring the control device into compliance with those requirements as soon as possible and prevent future failures of the control device from the same underlying cause(s).

(vii) If the results of the inspections required in paragraphs (b)(5)(ii) through (iv) of this section indicate that there is an emission or defect in your cover or closed vent system, you must perform an investigative analysis to determine the underlying primary and other contributing cause(s) of emissions from your cover or closed vent system within 5 days of completing the inspection required by paragraphs (b)(5)(ii) through (iv) of this section. The investigative analysis must include a determination as to whether the system was operated outside of the engineering design analysis and whether updates are necessary for the cover or closed vent system to prevent future emissions from the cover and closed vent system.

(6) You must maintain the records as specified in § 60.5420c(c)(3) through (c)(6), (c)(13) and (c)(14) and § 60.5424c(c).

(7) You must submit reports as specified in § 60.5424c.

(c) * * *

(5) * * *

(ii) Verify control devices (*e.g.,* flares) on all affected sources are operating in compliance with the applicable requirements of §§ 60.5415c and 60.5417c. You must ensure that all control devices are operating in compliance with the applicable regulations prior to beginning the period in paragraph (c)(5)(iii) of this section. Verify that all other methane emission sources (*e.g.,* reciprocating engines) located at the site are operating consistent with any applicable regulations. You must ensure that these sources are operating in compliance with the applicable regulations prior to beginning the period in paragraph (c)(5)(iii) of this section.

* * * * *

■ 50. Amend § 60.5400c by revising paragraphs (a)(1), (k), and (l) to read as follows:

§ 60.5400c What GHG standards apply to process unit equipment designated facilities?

* * * * *

(a) * * *

(1) Each piece of equipment is presumed to have the potential to emit methane unless an owner or operator demonstrates that the piece of equipment does not have the potential to emit methane. For a piece of equipment to be considered not to have the potential to emit methane, the methane content of a gaseous stream must be below detection limits using Method 18 of appendix A–6 of this part. Alternatively, if the piece of equipment is in wet gas service, you may choose to determine the methane content of the stream 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 § 60.17).

* * * * *

(k) *Reporting.* You must perform the reporting requirements as specified in § 60.5420c(b)(1) and (10) through (12), as applicable, and § 60.5422c.

(l) *Recordkeeping.* You must perform the recordkeeping requirements as specified in § 60.5420c(c)(7) and (9) through (12), as applicable, and § 60.5421c.

■ 51. Amend § 60.5401c by revising and republishing paragraphs (a) introductory text, (b), (c)(5), (f), (l), and (m) to read as follows:

§ 60.5401c What are the alternative GHG standards for process unit equipment designated facilities?

* * * * *

(a) *General standards.* You must comply with the requirements in paragraph (b) of this section for each pump in light liquid service. You must comply with the requirements of paragraph (c) of this section for each pressure relief device in gas/vapor service. You must comply with the requirements in paragraph (d) of this section for each open-ended valve or line. You must comply with the requirements in paragraph (e) of this section for each closed vent system and control device used to comply with equipment leak provisions in this section. You must comply with paragraph (f) of this section for each valve in gas/vapor or light liquid service. You must comply with paragraph (g) of this section for each pump, valve, and connector in heavy liquid service and pressure relief device in light liquid or heavy liquid service. You must comply with paragraph (h) of this section for each connector in gas/vapor and light liquid service. You must make repairs as specified in paragraph (i) of this section. You must demonstrate initial compliance with the standards as specified in paragraph (j) of this section. You must demonstrate continuous compliance with the standards as specified in paragraph (k) of this section. You must perform the reporting requirements as specified in paragraph (l) of this section. You must perform the recordkeeping requirements as required in paragraph (m) of this section.

* * * * *

(b) *Pumps in light liquid service.* You must monitor each pump in light liquid service monthly to detect leaks by the methods specified in § 60.5406c, except as provided in paragraphs (b)(2) through (6) of this section. A leak is defined as an instrument reading of 2,000 ppmv or greater. A pump that begins operation in light liquid service after the initial startup date for the process unit must be monitored for the first time within 30 days after the end of its startup period, except for a pump that replaces a leaking pump and except as provided in paragraphs (b)(2) through (6) of this section.

(1) In addition to the requirements in paragraph (b) of this section, you must conduct weekly visual inspections of all pumps in light liquid service for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, you must follow the procedure specified in either paragraph (b)(1)(i) or (ii) of this section.

(i) Monitor the pump within 5 days using the methods specified in § 60.5406c. A leak is defined as an instrument reading of 2,000 ppmv or greater.

(ii) Designate the visual indications of liquids dripping as a leak, and repair the leak as specified in paragraph (i) of this section.

(2) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements in paragraph (b) of this section, provided the requirements specified in paragraphs (b)(2)(i) through (v) of this section are met.

(i) Each dual mechanical seal system meets the requirements of paragraphs (b)(2)(i)(A), (B), or (C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of paragraph (e) of this section; or

(C) Equipped with a system that purges the barrier fluid into a process stream with zero methane emissions to the atmosphere.

(ii) The barrier fluid system is in heavy liquid service or does not have the potential to emit methane.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each pump is checked according to the requirements in paragraph (b)(1) of this section.

(v) Each sensor meets the requirements in paragraphs (b)(2)(v)(A) through (C) of this section.

(A) Each sensor as described in paragraph (b)(2)(iii) of this section is checked daily or is equipped with an audible alarm.

(B) You determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(C) If the sensor indicates failure of the seal system, the barrier fluid system, or both, based on the criterion established in paragraph (b)(2)(v)(B) of this section, a leak is detected.

(3) Any pump that is designated, as described in § 60.5421c(b)(12), for no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, is exempt from the requirements of paragraphs (b), (b)(1), and (b)(2) of this section if the pump:

(i) Has no externally actuated shaft penetrating the pump housing;

(ii) Is demonstrated to be operating with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background

as measured by the methods specified in § 60.5406c; and

(iii) Is tested for compliance with paragraph (b)(3)(ii) of this section initially upon designation, annually, and at other times requested by the Administrator.

(4) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a process, fuel gas system, or a control device that complies with the requirements of paragraph (e) of this section, it is exempt from paragraphs (b) introductory text and (b)(1) through (3) of this section, and the repair requirements of paragraph (i) of this section.

(5) Any pump that is designated, as described in § 60.5421c(b)(13), as an unsafe-to-monitor pump is exempt from the monitoring and inspection requirements of paragraphs (b) introductory text, (b)(1), and (b)(2)(iv) and (v) of this section if the conditions in paragraph (b)(5)(i) and (ii) are met.

(i) You demonstrate that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (b) of this section; and

(ii) You have a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and you repair the equipment according to the procedures in paragraph (i) of this section if a leak is detected.

(6) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirements in paragraph (b)(1) and (b)(2)(iv) of this section, and the daily requirements of paragraph (b)(2)(v) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

(c) * * *

(5) Pressure relief devices equipped with a rupture disk are exempt from the requirements of paragraphs (c)(1) and (2) of this section provided you install a new rupture disk upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in paragraph (i)(6) of this section.

* * * * *

(f) *Valves in gas/vapor and light liquid service.* You must monitor each valve in gas/vapor and in light liquid service quarterly to detect leaks by the methods specified in § 60.5406c, except as provided in paragraphs (f)(3) through (5) of this section.

(1) A valve that begins operation in gas/vapor service or in light liquid service after the initial startup date for the process unit must be monitored for the first time within 90 days after the end of its startup period to ensure proper installation, except for a valve that replaces a leaking valve and except as provided in paragraphs (f)(3) through (5) of this section.

(2) An instrument reading of 500 ppmv or greater is a leak. You must repair each leaking valve according to the requirements in paragraph (i) of this section.

(3) Any valve that is designated, as described in § 60.5421c(b)(12), for no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background, is exempt from the monitoring requirements of paragraph (f) of this section if the valve:

(i) Has no externally actuating mechanism in contact with the process fluid;

(ii) Is operated with emissions less than 500 ppmv above background as determined by the methods specified in § 60.5406c; and

(iii) Is tested for compliance with paragraph (f)(3)(ii) of this section initially upon designation, annually, and at other times requested by the Administrator.

(4) Any valve that is designated, as described in § 60.5421c(b)(13), as an unsafe-to-monitor valve is exempt from the monitoring requirements of paragraph (f) of this section if the requirements in paragraphs (f)(4)(i) and (ii) of this section are met.

(i) You demonstrate that the valve is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (f) of this section; and

(ii) You have a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and you repair the equipment according to the procedures in paragraph (i) of this section if a leak is detected.

(5) Any valve that is designated, as described in § 60.5421c(b)(14), as a difficult-to-monitor valve is exempt from the monitoring requirements of paragraph (f) of this section if the requirements in paragraph (f)(5)(i) through (iii) of this section are met.

(i) You demonstrate that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(ii) The process unit within which the valve is located has less than 3.0 percent of its total number of valves designated as difficult-to-monitor.

(iii) You have a written plan that requires monitoring of the at least once per calendar year.

* * * * *

(l) *Reporting.* You must perform the reporting requirements as specified in § 60.5420c(b)(1) and (10) through (12), as applicable, and § 60.5422c.

(m) *Recordkeeping.* You must perform the recordkeeping requirements as specified in § 60.5420c(c)(7) and (9) through (12), as applicable, and § 60.5421c.

■ 52. Amend § 60.5402c by revising paragraph (d) introductory text to read as follows:

§ 60.5402c What are the exceptions to the GHG standards for process unit equipment designated facilities?

* * * * *

(d) You may use the following provisions instead of § 60.5406c(d):

* * * * *

■ 53. Amend § 60.5405c by revising paragraphs (a) introductory text, (a)(2), and (c)(4)(ii) to read as follows:

§ 60.5405c What test methods and procedures must I use for my centrifugal compressor and reciprocating compressor designated facilities?

(a) You must use one of the methods described in paragraphs (a)(1) and (2) of this section to screen for emissions or leaks from the reciprocating compressor rod packing when complying with § 60.5393c(b)(1)(iii), (b)(2)(i), or (c)(2)(iv), and from the compressor dry and wet seal vents when complying with § 60.5392c(a)(2)(i)(A).

* * * * *

(2) *Method 21.* Use Method 21 in appendix A–7 to this part according to § 60.5406c(b)(1) and (2). For the purposes of this section, an instrument reading of 500 ppmv above background or greater is a leak.

* * * * *

(c) * * *

(4) * * *

(ii) The flow measurement sensor(s) must be capable of taking a measurement once every second, and the data system must be capable of recording these results for each sensor at all times during operation of the sampler.

* * * * *

■ 54. Amend § 60.5406c by revising paragraph (c) introductory text to read as follows:

§ 60.5406c What test methods and procedures must I use for my process unit equipment designated facilities?

* * * * *

(c) You shall determine compliance with the no detectable emission standards in § 60.5401c(b) and (f) as specified in paragraphs (c)(1) and (2) of this section.

* * * * *

■ 55. Section 60.5410c is revised and republished to read as follows:

§ 60.5410c How do I demonstrate initial compliance with the standards for each of my designated facilities?

(a) *Gas well liquids unloading standards for well designated facility.* To demonstrate initial compliance with the GHG standards for each gas well liquids unloading operation conducted at your well designated facility as required by § 60.5390c, you must comply with paragraphs (a)(1) through (4) of this section, as applicable.

(1) You must submit the initial annual report for your well designated facility as required in § 60.5420c(b)(1) and (2).

(2) If you comply by using a liquids unloading technology or technique that does not vent to the atmosphere according to § 60.5390c(a)(1), you must maintain the records specified in § 60.5420c(c)(1)(i).

(3) If you comply by using a liquids unloading technology or technique that vents to the atmosphere according to § 60.5390c(a)(2), (b) and (c), you must comply with paragraphs (a)(3)(i) and (ii) of this section.

(i) Employ best management practices to minimize venting of methane emissions as specified in § 60.5390c(c) for each gas well liquids unloading operation.

(ii) Maintain the records specified in § 60.5420c(c)(1)(ii).

(4) If you comply by using § 60.5390c(g), you must comply with paragraphs (b)(4)(i) through (vi) of this section.

(i) Reduce methane emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413c.

(ii) Install a closed vent system that meets the requirements of § 60.5411c(a) and (c) to capture all emissions and route all emissions to a control device that meets the conditions specified in § 60.5412c.

(iii) Conduct an initial performance test as required in § 60.5413c within 180 days after the initial gas well liquids unloading operation or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e), and comply with the continuous compliance requirements of § 60.5415c(e).

(iv) Conduct the initial inspections required in § 60.5416c(a) and (b).

(v) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(vi) Maintain the records specified in § 60.5420c(c)(1)(iii), (c)(7), and (c)(9) through (12), as applicable and submit the reports as required by § 60.5420c(b)(10) through (12), as applicable.

(b) *Associated gas well standards for well designated facility.* To demonstrate initial compliance with the GHG standards for each associated gas well as required by § 60.5391c, you must comply with paragraphs (b)(1) through (5) of this section.

(1) If you comply with the requirements of § 60.5391c(a), you must maintain the records specified in § 60.5420c(c)(2)(i) and (ii), as applicable, and submit the information required by § 60.5420c(b)(3)(i) through (v) in your initial annual report.

(2) If you comply with § 60.5391c(b) because you have demonstrated that annual methane emissions are 40 tons per year or less, you must document the calculation of annual methane emissions determined in accordance with § 60.5391c(e)(1) and submit them in the initial annual report as required by paragraph (b)(5) of this section, and comply with paragraphs (b)(4) of this section.

(3) If you comply with § 60.5391c(b) because you have demonstrated that it is not feasible to comply with § 60.5391c(a)(1), (2), (3), or (4) due to technical reasons, document the initial demonstration and certification of the technical reason in accordance with § 60.5391c(b)(2), maintain the documentation in accordance with § 60.5391c(b)(2)(iv), and comply with paragraphs (b)(4) of this section. Submit this documentation in the initial annual report as required by paragraph (b)(5) of this section and comply with paragraph (b)(4) of this section.

(4) If you comply with § 60.5391c(b) or (c), you must comply with paragraphs (b)(4)(i) through (vi) of this section.

(i) Reduce methane emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413c.

(ii) Install a closed vent system that meets the requirements of § 60.5411c(a) and (c) to capture the associated gas and route the captured associated gas to a control device that meets the conditions specified in § 60.5412c.

(iii) Conduct an initial performance test as required in § 60.5413c within 180 days after initial startup or by 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e) and you must comply with the continuous compliance requirements of § 60.5415c(e).

(iv) Conduct the initial inspections required in § 60.5416c(a) and (b).

(v) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(vi) Maintain the records specified in § 60.5420c(c)(2)(ii) and (v) and (c)(7) and (9) through (12), as applicable.

(5) You must submit the initial annual report for your associated gas well at a well designated facility as required in § 60.5420c(b)(1), (3), and (10) through (12), as applicable.

(c) *Centrifugal compressor designated facility.* To demonstrate initial compliance with the GHG standards in § 60.5392c(a)(1) and (2) for your centrifugal compressors (including both wet seal centrifugal compressors and dry seal centrifugal compressors) that require volumetric flow rate measurements, you must comply with paragraphs (c)(1), (6), and (7) of this section. Alternatively, if you comply with the GHG standards for your wet seal and dry seal centrifugal compressor designated facility by reducing methane emissions from each centrifugal compressor wet seal fluid degassing system by 95.0 percent in accordance with § 60.5392c(a)(3) and (4), you must achieve initial compliance by complying with paragraphs (c)(2) through (7) of this section. If you comply with the GHG standards for your wet seal and dry seal centrifugal compressor designated facility by routing emissions from the wet seal fluid degassing system through a closed vent system to a process in accordance with § 60.5392c(a)(5), you must achieve initial compliance by complying with paragraphs (c)(2), (4), (6), and (7) of this section.

(1) You must maintain the volumetric flow rates for your centrifugal compressors as specified in paragraphs (c)(1)(i) through (iii) of this section, as applicable. You must conduct your initial annual volumetric measurement as required by § 60.5392c(a)(1).

(i) For your wet seal centrifugal compressors (including self-contained wet seal centrifugal compressors), you must maintain the volumetric flow rate at or below 3 scfm per seal.

(ii) For your Alaska North Slope centrifugal compressor equipped with sour seal oil separator and capture system, you must maintain the

volumetric flow rate at or below 9 scfm per seal.

(iii) For your dry seal compressor, you must maintain the volumetric flow rate at or below 10 scfm per seal.

(2) If you use a control device to reduce emissions to comply with § 60.5392c(a)(4) or route the emissions to a process to comply with § 60.5392c(a)(5), you must equip the wet seal fluid degassing system or dry seal system with a cover that meets the requirements of § 60.5411c(b) and route the captured vapors through a closed vent system that meets the requirements of § 60.5411c(a) and (c) and is routed to a control device or process.

(3) If you use a control device to comply with § 60.5392c(a)(4), you must conduct an initial performance test as required in § 60.5413c within 180 days after initial startup, or by 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e) and you must comply with the continuous compliance requirements of § 60.5415c(e).

(4) If you use a control device to comply with § 60.5392c(a)(4) or comply with § 60.5392c(a)(5) by routing to a process, you must conduct the initial inspections required in § 60.5416c(a) and (b).

(5) If you use a control device to comply with § 60.5392c(a)(4), you must install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(6) You must submit the initial annual report for your centrifugal compressor designated facility as required in § 60.5420c(b)(1) and (4) and (b)(10) through (12), as applicable.

(7) You must maintain the records as specified in § 60.5420c(c)(3) and (c)(7) through (12), as applicable.

(d) *Reciprocating compressor designated facility.* To demonstrate initial compliance with the GHG standards for each reciprocating compressor designated facility as required by § 60.5393c, you must comply with paragraphs (d)(1) through (7) of this section.

(1) If you comply with § 60.5393c(a) by maintaining volumetric flow rate at or below 2 scfm per cylinder (or a combined cylinder emission flow rate greater than the number of compression cylinders multiplied by 2 scfm) as required by § 60.5393c(a), you must maintain volumetric flow rate at or below 2 scfm and you must conduct your initial annual volumetric flow rate measurement as required by § 60.5393c(a)(1).

(2) If you comply with § 60.5393c by collecting the methane emissions from your reciprocating compressor rod packing using a rod packing emissions collection system to a process as required by § 60.5393c(d)(1), you must equip the reciprocating compressor with a cover that meets the requirements of § 60.5411c(b), route emissions to a process through a closed vent system that meets the requirements of § 60.5411c(a) and (c), and you must conduct the initial inspections required in § 60.5416c(a) and (b).

(3) If you comply with § 60.5393c(d) by collecting emissions from your rod packing emissions collection system by using a control device to reduce methane emissions by 95.0 percent as required by § 60.5393c(d)(2), you must equip the reciprocating compressor with a cover that meets the requirements of § 60.5411c(b), route emissions to a control device that meets the conditions specified in § 60.5412c through a closed vent system that meets the requirements of § 60.5411c(a) and (c), and you must conduct the initial inspections required in § 60.5416c(a) and (b).

(4) If you comply with § 60.5393c(d)(2), you must conduct an initial performance test as required in § 60.5413c within 180 days after initial startup, or by 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e) and you must comply with the continuous compliance requirements of § 60.5415c(e).

(5) If you comply with § 60.5393c(d)(2), you must install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(6) You must submit the initial annual report for your reciprocating compressor as required in § 60.5420c(b)(1), (5), and (10) through (12), as applicable.

(7) You must maintain the records as specified in § 60.5420c(c)(4) and (7) through (12), as applicable.

(e) *Process controller designated facility.* To demonstrate initial compliance with GHG emission standards for your process controller designated facility, you must comply with paragraphs (e)(1) through (5) of this section, as applicable. If you change compliance methods, you must also perform the applicable compliance demonstrations of paragraphs (e)(1) through (3) of this section again for the new compliance method, note the change in compliance method in the annual report required by § 60.5420c(b)(6)(iv), and maintain the records required by paragraph (e)(1)(i) or (ii) of this section, as applicable, for the new compliance method.

(1) For process controller designated facilities complying with the requirements of § 60.5394c(a), you must demonstrate that your process controller designated facility does not emit any methane to the atmosphere by meeting the requirements of paragraphs (e)(1)(i) and (ii) of this section.

(i) If you comply by routing the emissions to a process, you must meet the requirements for closed vent systems specified in paragraph (e)(3) of this section.

(ii) If you comply by using a self-contained natural gas-driven process controller, you must conduct an initial no identifiable emissions inspection required by § 60.5416c(b).

(2) For each process controller designated facility located at a site in Alaska that does not have access to electrical power, you must demonstrate initial compliance with § 60.5394c(b)(1) and (2) or with § 60.5394c(b)(3), as an alternative to complying with paragraph § 60.5394c(a) by meeting the requirements specified in (e)(2)(i) through (v) of this section for each process controller, as applicable.

(i) For each process controller in the process controller designated facility operating with a bleed rate of less than or equal to 6 scfh, you must maintain records in accordance with § 60.5420c(c)(5)(iii)(A) that demonstrate the process controller is designed and operated to achieve a bleed rate less than or equal to 6 scfh.

(ii) For each process controller in the process controller designated facility operating with a bleed rate greater than 6 scfh, you must maintain records that demonstrate that a controller with a higher bleed rate than 6 scfh is required based on a specific functional need for that controller as specified in § 60.5420c(c)(5)(iii)(B).

(iii) For each intermittent vent process controller in the process controller designated facility you must demonstrate that each intermittent vent controller does not emit to the atmosphere during idle periods by conducting initial monitoring in accordance with § 60.5394c(b)(2)(ii).

(iv) For each process controller designated facility that complies by reducing methane emissions from all controllers in the process controller designated facility by 95.0 percent in accordance with § 60.5394c(b)(3), you must comply with paragraphs (e)(2)(iv)(A) through (D) of this section.

(A) Reduce methane emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413c.

(B) Route all process controller designated facility emissions to a control device that meets the conditions specified in § 60.5412c through a closed vent system that meets the requirements specified in paragraph (e)(3) of this section.

(C) Conduct an initial performance test as required in § 60.5413c within 180 days after initial startup, or by 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e) and you must comply with the continuous compliance requirements of § 60.5415c(e).

(D) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(3) For each closed vent system used to comply with § 60.5394c, you must meet the requirements specified in paragraphs (e)(3)(i) and (ii) of this section.

(i) Install a closed vent system that meets the requirements of § 60.5411c(a) and (c).

(ii) Conduct the initial inspections of the closed vent system and bypasses, if applicable, as required in § 60.5416c(a) and (b).

(4) You must submit the initial annual report for your process controller designated facility as required in § 60.5420c(b)(1) and (6).

(5) You must maintain the records as specified in § 60.5420c(c)(5).

(f) *Pump designated facility.* To demonstrate initial compliance with the GHG standards for your pump designated facility as required by § 60.5395c, you must comply with paragraphs (f)(1) through (4) of this section, as applicable. If you change compliance methods, you must also perform the applicable compliance demonstrations of paragraphs (f)(1) and (2) of this section again for the new compliance method, note the change in compliance method in the annual report required by § 60.5420c(b)(9)(v), and maintain the records required by paragraph (f)(4) of this section for the new compliance method.

(1) For pump designated facilities complying with the requirements of § 60.5395c(a) or (b)(2) by routing emissions to a process, you must meet the requirements specified in paragraphs (f)(1)(ii) and (iv) of this section. For pump designated facilities complying with the requirements of § 60.5395c(b)(3), you must meet the requirements specified in paragraphs (f)(1)(i) through (v) of this section.

(i) Reduce methane emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413c.

(ii) Install a closed vent system that meets the requirements of § 60.5411c(a) and (c) to capture all emissions from all pumps in the pump designated facility and route all emissions to a process or control device that meets the conditions specified in § 60.5412c.

(iii) Conduct an initial performance test as required in § 60.5413c within 180 days after initial startup, or by 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e), and you must comply with the continuous compliance requirements of § 60.5415c(e).

(iv) Conduct the initial inspections of the closed vent system and bypasses, if applicable, as required in § 60.5416c(a) and (b).

(v) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(2) Submit the certifications specified in paragraphs (f)(2)(i) through (iii) of this section, as applicable.

(i) The certification required by § 60.5395c(b)(3) that there is no vapor recovery unit on site and that there is a control device on site, but it does not achieve a 95.0 percent emissions reduction.

(ii) The certification required by § 60.5395c(b)(4) that there is no control device or process available on site.

(iii) The certification required by § 60.5395c(b)(7)(i) that it is technically infeasible to capture and route the pump designated facility emissions to a process or an existing control device.

(3) You must submit the initial annual report for your pump designated facility as specified in § 60.5420c(b)(1) and (9) through (12), as applicable.

(4) You must maintain the records for your pump designated facility as specified in § 60.5420c(c)(7) and (9) through (12), as applicable, and (c)(14).

(g) *Process unit equipment designated facility.* To achieve initial compliance with the GHG standards for process unit equipment designated facilities as required by § 60.5400c, you must comply with paragraphs (g)(1) through (4) and (11) through (15) of this section, unless you meet and comply with the exception in § 60.5402c(b), (e), or (f) or meet the exemption in § 60.5402c(c). If you comply with the GHG standards for process unit equipment designated facilities using the alternative standards in § 60.5401c, you must comply with paragraphs (g)(5) through (15) of this section, unless you meet and comply with the exemption in § 60.5402c(b) or (c) or the exception in § 60.5402c(e) or (f).

(1) You must conduct monitoring 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 required by § 60.5400c(b).

(2) You must conduct monitoring as required by § 60.5400c(c) for each pump in light liquid service.

(3) You must conduct monitoring as required by § 60.5400c(d) for each pressure relief device in gas/vapor service.

(4) You must comply with the equipment requirements for each open-ended valve or line as required by § 60.5400c(e).

(5) You must conduct monitoring for each pump in light liquid service as required by § 60.5401c(b).

(6) You must conduct monitoring for each pressure relief device in gas/vapor service as required by § 60.5401c(c).

(7) You must comply with the equipment requirements for each open-ended valve or line as required by § 60.5401c(d).

(8) You must conduct monitoring for each valve in gas/vapor or light liquid service as required by § 60.5401c(f).

(9) You must conduct monitoring for each pump, valve, and connector in heavy liquid service and each pressure relief device in light liquid or heavy liquid service as required by § 60.5401c(g).

(10) You must conduct monitoring for each connector in gas/vapor or light liquid service as required by § 60.5401c(h).

(11) For each pump equipped with a dual mechanical seal system that degasses the barrier fluid reservoir to a process or a control device, each pump which captures and transports leakage from the seal or seals to a process or a control device, or each pressure relief device which captures and transports leakage through the pressure relief device to a process or a control device, you must meet the requirements of paragraph (g)(11)(i) through (vi) of this section.

(i) Reduce methane emissions by 95.0 percent or greater and as demonstrated by the requirements of § 60.5413c or route to a process.

(ii) Install a closed vent system that meets the requirements of § 60.5411c(a)

and (c) to capture all emissions from each pump equipped with a dual mechanical seal system that degasses the barrier fluid reservoir, each pump which captures and transports leakage from the seal or seals, or each pressure relief device which captures and transports leakage through the pressure relief device and route all emissions to a process or to a control device that meets the conditions specified in § 60.5412c.

(iii) If routing to a control device, conduct an initial performance test as required in § 60.5413c within 180 days after initial startup, or by 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e), and you must comply with the continuous compliance requirements of § 60.5415c(e).

(iv) Conduct the initial inspections of the closed vent system and bypasses, if applicable, as required in § 60.5416c(a) and (b).

(v) Install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(vi) Maintain the records as required by § 60.5420c(c)(7) and (c)(9) through (12), as applicable and submit the reports as required by § 60.5420c(b)(10) through (12), as applicable.

(12) You must tag and repair each identified leak as required in § 60.5400c(h) or § 60.5401c(i), as applicable.

(13) You must submit the notice required by § 60.5420c(a)(2).

(14) You must submit the initial semiannual report and subsequent semiannual report as required by § 60.5422c.

(15) You must maintain the records specified by § 60.5421c.

(h) *Storage vessel designated facility.* To achieve initial compliance with the GHG standards for each storage vessel designated facility as required by § 60.5396c, you must comply with paragraphs (h)(1) through (9) of this section. To achieve initial compliance with the GHG standards for each storage vessel designated facility that complies by using a floating roof in accordance with § 60.5396c(b)(2), you must comply with paragraph (h)(1) and (10) of this section.

(1) You must determine the potential for methane emissions as specified in § 60.5386c(e)(2).

(2) You must reduce methane emissions by 95.0 percent or greater according to § 60.5396c(a) and as demonstrated by the requirements of § 60.5413c or route to a process.

(3) If you use a control device to reduce emissions, you must equip each storage vessel in the storage vessel designated facility with a cover that meets the requirements of § 60.5411c(b), install a closed vent system that meets the requirements of § 60.5411c(a) and (c) to capture all emissions from the storage vessel designated facility, and route all emissions to a control device that meets the conditions specified in § 60.5412c. If you route emissions to a process, you must equip each storage vessel in the storage vessel affected facility with a cover that meets the requirements of § 60.5411c(b), install a closed vent system that meets the requirements of § 60.5411c(a) and (c) to capture all emissions from the storage vessel affected facility, and route all emissions to a process.

(4) If you use a control device to reduce emissions, you must conduct an initial performance test as required in § 60.5413c within 180 days after initial startup, or within 180 days 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), whichever date is later, or install a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e), and you must comply with the continuous compliance requirements of § 60.5415c(e).

(5) You must conduct the initial inspections of the closed vent system and bypasses, if applicable, as required in § 60.5416c(a) and (b).

(6) You must install and operate the continuous parameter monitoring systems in accordance with § 60.5417c(a) through (i), as applicable.

(7) You must maintain the records as required by § 60.5420c(c)(7) through (12), as applicable and submit the reports as required by § 60.5420c(b)(10) through (12), as applicable.

(8) You must submit the initial annual report for your storage vessel designated facility required by § 60.5420c(b)(1) and (7).

(9) You must maintain the records required for your storage vessel designated facility, as specified in § 60.5420c(c)(6) for each storage vessel designated facility.

(10) For each storage vessel designated facility that complies by using a floating roof, you must meet the requirements of § 60.112b(a)(1) or (2) and the relevant monitoring, inspection, recordkeeping, and reporting requirements in subpart Kb of this part. You must submit a statement that you are complying with § 60.112b(d)(a)(1) or (2) in accordance with § 60.5396c(b)(2) with the initial annual report specified in § 60.5420c(b)(1) and (7).

(i) *Fugitive emission components designated facility.* To achieve initial compliance with the GHG standards for fugitive emissions components designated facilities as required by § 60.5397c, you must comply with paragraphs (i)(1) through (5) of this section.

(1) You must develop a fugitive emissions monitoring plan as required in § 60.5397c(b), (c), and (d).

(2) You must conduct an initial monitoring survey as required in § 60.5397c(e) and (f).

(3) You must repair each identified source of fugitive emissions for each designated facility as required in § 60.5397c(h).

(4) You must submit the initial annual report for each fugitive emissions components designated facility as required in § 60.5420c(b)(1) and (8).

(5) You must maintain the records specified in § 60.5420c(c)(13).

■ 56. Amend § 60.5411c by revising paragraph (b)(4) to read as follows:

§ 60.5411c What additional requirements must I meet to determine initial compliance for my covers and closed vent systems?

* * * * *

(b) * * *

(4) You must design and operate the cover with no identifiable emissions as demonstrated by § 60.5416c(a) and (b), except when operated as provided in paragraphs (b)(2)(i) through (iv) of this section.

* * * * *

■ 57. Amend § 60.5412c by revising paragraphs (a) introductory text, (a)(3)(iii) and (iv), and (c)(1)(i) to read as follows:

§ 60.5412c What additional requirements must I meet for determining initial compliance of my control devices?

* * * * *

(a) Each control device used to meet the emissions reduction standard in § 60.5390c(g) for your well designated facility gas well that unloads liquids; § 60.5391c(b) or (c) for your well designated facility with associated gas; § 60.5392c(a)(4) for your centrifugal compressor designated facility; § 60.5393c(d)(2) for your reciprocating compressor designated facility; § 60.5396c(a)(2) for your storage vessel designated facility; § 60.5394c(b)(3) for your process controller designated facility in Alaska; § 60.5395c(b)(3) for your pumps designated facility; or either § 60.5400c(f) or § 60.5401c(e) for your process equipment designated facility must be installed according to paragraphs (a)(1) through (3) of this

section. As an alternative to paragraphs (a)(1) through (3) of this section, you may install a control device model tested under § 60.5413c(d), which meets the criteria in § 60.5413c(d)(11) and which meets the initial and continuous compliance requirements in § 60.5413c(e).

* * * * *

(3) * * *

(iii) For steam-assisted and air-assisted flares, you must maintain the NHV_{cz} at or above 270 Btu/scf.

(iv) For flares with perimeter assist air, you must maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the flare is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are not required to comply with the NHV_{dil} limit.

* * * * *

(c) * * *

(1) * * *

(i) Following the initial startup of the control device, you must replace all carbon in the carbon adsorption system with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413c(c)(2) or (3). You must maintain records identifying the schedule for replacement and records of each carbon replacement as required in § 60.5420c(c)(10).

* * * * *

■ 58. Amend § 60.5413c by revising the introductory text to read as follows:

§ 60.5413c What are the performance testing procedures for control devices?

This section applies to the performance testing of control devices used to demonstrate compliance with the emissions standards for your well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment designated facilities. You must demonstrate that a control device achieves the performance requirements of § 60.5412c(a)(1) or (2) using the performance test methods and procedures specified in this section. For condensers and carbon adsorbers, you may use a design analysis as specified in paragraph (c) of this section in lieu of complying with paragraph (b) of this section. In addition, this section contains the requirements for enclosed combustion device performance tests conducted by the manufacturer applicable to well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment designated facilities.

* * * * *

■ 59. Section 60.5415c is revised and republished to read as follows:

§ 60.5415c How do I demonstrate continuous compliance with the standards for each of my designated facilities?

(a) *Gas well liquids unloading standards for well designated facility.* For each well liquids unloading operation at your well designated facility, you must demonstrate continuous compliance with the requirements of § 60.5390c by submitting the annual report information specified in § 60.5420c(b)(1) and (2) and maintaining the records for each well liquids unloading event that vents to the atmosphere as specified in § 60.5420c(c)(1). For each gas well liquids unloading well designated facility that complies with the requirements of § 60.5390c(g), you must route emissions to a control device through a closed vent system and continuously comply with the closed vent requirements of § 60.5416c. You also must comply with the requirements specified in paragraph (e) of this section and maintain the reports in § 60.5420c(b)(10)(i) through (iv) and maintain the records in § 60.5420c(c)(7), (9), and (11).

(b) *Associated gas well standards for well designated facility.* For each associated gas well at your well designated facility, you must demonstrate continuous compliance with the requirements of § 60.5391c by submitting the reports required by § 60.5420c(b)(1) and (3) and maintaining the records specified in § 60.5420c(c)(2). For each associated gas well at your well designated facility that complies with the requirements of § 60.5391c(b) or (c), you must route emissions to a control device through a closed vent system and continuously comply with the closed vent requirements of § 60.5416c. You must also comply with the requirements specified in paragraph (e) of this section and maintain the records in paragraphs (c)(7), (9) and (11) of this section.

(c) *Centrifugal compressor designated facility.* For each centrifugal compressor designated facility complying with the volumetric flow rate measurements requirements in § 60.5392c(a)(1) and (2), you must demonstrate continuous compliance according to paragraph (c)(1) and paragraphs (c)(3) and (4) of this section. Alternatively, for each centrifugal compressor designated facility complying with § 60.5392c(a)(3) and either (a)(4) or (5) by routing emissions to a control device or to a process, you must demonstrate continuous compliance according to paragraphs (c)(2) through (4) of this section.

(1) You must maintain volumetric flow rate at or below the volumetric flow rates specified in paragraphs (c)(1)(i) through (iii) of this section for your centrifugal compressor, as applicable, and you must conduct the required volumetric flow rate measurement of your dry or wet seal in accordance with § 60.5392c(a)(1) and (2) on or before 8,760 hours of operation after your last volumetric flow rate measurement which demonstrates compliance with the applicable volumetric flow rate.

(i) For your wet seal centrifugal compressors (including self-contained wet seal centrifugal compressors), you must maintain the volumetric flow rate at or below 3 scfm per seal (or in the case of manifolded groups of seals, 3 scfm multiplied by the number of seals).

(ii) For your Alaska North Slope centrifugal compressor equipped with sour seal oil separator and capture system, you must maintain the volumetric flow rate at or below 9 scfm per seal (or in the case of manifolded groups of wet seals, 9 scfm multiplied by the number of seals).

(iii) For your dry seal compressor, you must maintain the volumetric flow rate at or below 10 scfm per seal (or in the case of manifolded groups of wet seals, 10 scfm multiplied by the number of seals).

(2) For each wet seal and dry seal centrifugal compressor designated facility complying by routing emissions to a control device or to a process, you must operate the wet seal emissions collection system and dry seal system to route emissions to a control device or a process through a closed vent system and continuously comply with the closed vent requirements of § 60.5416c. If you comply with § 60.5392c(a)(4) by using a control device, you also must comply with the requirements in paragraph (e) of this section.

(3) You must submit the annual reports as required in § 60.5420c(b)(1), (4) and (10)(i) through (iv), as applicable.

(4) You must maintain records as required in § 60.5420c(c)(3), (7) through (9) and (11), as applicable.

(d) *Pump designated facility.* To demonstrate continuous compliance with the GHG standards for your pump designated facility as required by § 60.5395c, you must comply with paragraphs (d)(1) through (3) of this section.

(1) For pump designated facilities complying with the requirements of

§ 60.5395c(a) by routing emissions to a process and for pump designated facilities complying with the requirements of § 60.5395c(b)(2) or (3), you must continuously comply with the closed vent system requirements of § 60.5416c. If you comply with § 60.5395c(b)(3), you also must comply with the requirements in paragraph (e) of this section.

(2) You must submit the annual reports for your pump designated facility as required in § 60.5420c(b)(1) and (9) and (b)(10)(i) through (iv), as applicable.

(3) You must maintain the records for your pump designated facility as specified in § 60.5420c(c)(7), (9), (11), and (14), as applicable.

(e) *Additional continuous compliance requirements for well, centrifugal compressor, reciprocating compressor, process controllers in Alaska, storage vessel, process unit equipment, or pump designated facilities.* For each associated gas well at your well designated facility, each gas well liquids unloading operation at your well designated facility, each centrifugal compressor designated facility, each reciprocating compressor designated facility, each process controller designated facility in Alaska, each storage vessel designated facility, each process unit equipment designated facility, and each pump designated facility referenced to this paragraph from paragraph (a), (b), (c)(2), (d)(1), (f)(2), (g)(2), (h)(5)(ii)(B), or (i)(12) of this section, you must also install monitoring systems as specified in § 60.5417c, demonstrate continuous compliance according to paragraph (e)(1) of this section, maintain the records in paragraph (e)(2) of this section, and comply with the reporting requirements specified in paragraph (e)(3) of this section.

(1) You must demonstrate continuous compliance with the control device performance requirements of § 60.5412c(a) using the procedures specified in paragraphs (e)(1)(i) through (viii) of this section and conducting the monitoring as required by § 60.5417c. If you use a condenser as the control device to achieve the requirements specified in § 60.5412c(a)(2), you may demonstrate compliance according to paragraph (e)(1)(ix) of this section. You may switch between compliance with paragraphs (e)(1)(i) through (viii) of this section and compliance with paragraph (e)(1)(ix) of this section only after at least 1 year of operation in compliance with the selected approach. You must provide notification of such a change in the compliance method in the next annual report, following the change. If you use an enclosed combustion device or a flare as the control device, you must also conduct the monitoring required in paragraph (e)(1)(x) of this section. If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d), you must use the procedures in paragraph (e)(1)(xi) of this section in lieu of the procedures in paragraphs (e)(1)(i) through (viii) of this section, but you must still conduct the monitoring required in paragraph (e)(1)(x) of this section.

(i) You must operate below (or above) the site-specific maximum (or minimum) parameter value established according to the requirements of § 60.5417c(f)(1). For flares, you must operate above the limits specified in paragraphs (e)(1)(vii)(B) of this section.

(ii) You must calculate the average of the applicable monitored parameter in accordance with § 60.5417c(e).

(iii) Compliance with the operating parameter limit is achieved when the average of the monitoring parameter value calculated under paragraph (e)(1)(ii) of this section is either equal to or greater than the minimum parameter value or equal to or less than the maximum parameter value established under paragraph (e)(1)(i) of this section. When performance testing of a combustion control device is conducted by the device manufacturer as specified in § 60.5413c(d), compliance with the operating parameter limit is achieved when the criteria in § 60.5413c(e) are met.

(iv) You must operate the continuous monitoring system required in § 60.5417c(a) at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(v) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other required data collection periods to assess the operation of the control device and associated control system.

(vi) Failure to collect required data is a deviation of the monitoring requirements.

(vii) If you use an enclosed combustion device to meet the requirements of § 60.5412c(a)(1) and you demonstrate compliance using the test procedures specified in § 60.5413c(b), or you use a flare designed and operated in accordance with § 60.5412c(a)(3), you must comply with the applicable requirements in paragraphs (e)(1)(vii)(A) through (E) of this section.

(A) For each enclosed combustion device which is not a catalytic vapor incinerator and for each flare, you must comply with the requirements in paragraphs (e)(1)(vii)(A)(*1*) through (*4*) of this section.

(*1*) A pilot or combustion flame must be present at all times of operation. An alert must be sent to the nearest control room whenever the pilot or combustion flame is unlit.

(*2*) Devices must be operated with no visible emissions, except for periods not to exceed a total of 1 minute during any 15-minute period. A visible emissions test conducted according to section 11 of Method 22 of appendix A–7 to this part, must be performed at least once every calendar month, separated by at least 15 days between each test. The observation period shall be 15 minutes or once the amount of time visible emissions is present has exceeded 1 minute, whichever time period is less. Alternatively, you may conduct visible emissions monitoring according to § 60.5417c(h).

(*3*) Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available for inspection.

(*4*) Following return to operation from maintenance or repair activity, each device must pass a Method 22 of appendix A–7 to this part visual observation as described in paragraph (e)(1)(vii)(D) of this section or be monitored according to § 60.5417c(h).

(B) For flares, you must comply with the requirements in paragraphs (e)(1)(vii)(B)(*1*) through (*6*) of this section.

(*1*) For unassisted flares, maintain the NHV of the gas sent to the flare at or above 200 Btu/scf.

(*2*) If you use a pressure assisted flare, maintain the NHV of gas sent to the flare at or above 800 Btu/scf.

(*3*) For steam-assisted and air-assisted flares, maintain the NHV_{cz} at or above 270 Btu/scf.

(*4*) For flares with perimeter assist air, maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the flare is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are not required to comply with the NHV_{dil} limit.

(*5*) Unless you use a pressure-assisted flare, maintain the flare tip velocity below the applicable limits in § 60.18(b).

(*6*) Maintain the total gas flow to the flare above the minimum inlet gas flow rate. The minimum inlet gas flow rate is established based on manufacturer recommendations.

(C) For enclosed combustion devices for which, during the performance test conducted under § 60.5413c(b), the combustion zone temperature is not an indicator of destruction efficiency, you must comply with the requirements in paragraphs (e)(1)(vii)(C)(*1*) through (*5*) of this section, as applicable.

(*1*) Maintain the total gas flow to the enclosed combustion device at or above the minimum inlet gas flow rate and at or below the maximum inlet flow rate for the enclosed combustion device established in accordance with § 60.5417c(f).

(*2*) For unassisted enclosed combustion devices, maintain the NHV of the gas sent to the enclosed combustion device at or above 200 Btu/scf.

(*3*) For enclosed combustion devices that use pressure-assisted burner tips to promote mixing at the burner tip, maintain the NHV of the gas sent to the enclosed combustion device at or above 800 Btu/scf.

(*4*) For steam-assisted and air-assisted enclosed combustion devices, maintain the NHV_{cz} at or above 270 Btu/scf.

(*5*) For enclosed combustion devices with perimeter assist air, maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the enclosed combustion device is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are not required to comply with the NHV_{dil} limit.

(D) For enclosed combustion devices for which, during the performance test conducted under § 60.5413c(b), the combustion zone temperature is demonstrated to be an indicator of destruction efficiency, you must comply with the requirements in paragraphs (e)(1)(vii)(D)(*1*) and (*2*) of this section.

(*1*) Maintain the temperature at or above the minimum temperature established during the most recent performance test. The minimum temperature limit established during the most recent performance test is the average temperature recorded during each test run, averaged across the 3 test runs (average of the test run averages).

(*2*) Maintain the total gas flow to the enclosed combustion device at or above the minimum inlet gas flow rate and at or below the maximum inlet flow rate for the enclosed combustion device established in accordance with § 60.5417c(f).

(E) For catalytic vapor incinerators you must operate the catalytic vapor incinerator at or above the minimum temperature of the catalyst bed inlet and at or above the minimum temperature differential between the catalyst bed inlet and the catalyst bed outlet established in accordance with § 60.5417c(f).

(viii) If you use a carbon adsorption system as the control device to meet the requirements of § 60.5412c(a)(2), you must demonstrate compliance by the procedures in paragraphs (e)(1)(viii)(A) and (B) of this section, as applicable.

(A) If you use a regenerative-type carbon adsorption system, you must comply with paragraphs (e)(1)(viii)(A)(*1*) through (*4*) of this section.

(*1*) You must maintain the average regenerative mass flow or volumetric flow to the carbon adsorber during each bed regeneration cycle above the limit established in in accordance with § 60.5413c(c)(2).

(*2*) You must maintain the average carbon bed temperature above the temperature limit established in accordance with § 60.5413c(c)(2) during the carbon bed steaming cycle and below the carbon bed temperature established in in accordance with § 60.5413c(c)(2) after the regeneration cycle.

(*3*) You must check the mechanical connections for leakage at least every month, and you must perform a visual inspection at least every 3 months of all components of the continuous parameter monitoring system for physical and operational integrity and all electrical connections for oxidation and galvanic corrosion if your continuous parameter monitoring system is not equipped with a redundant flow sensor.

(*4*) You must replace all carbon in the carbon adsorption system with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413c(c)(2).

(B) If you use a nonregenerative-type carbon adsorption system, you must replace all carbon in the control device with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established according to § 60.5413c(c)(3).

(ix) If you use a condenser as the control device to achieve the percent reduction performance requirements specified in § 60.5412c(a)(2), you must demonstrate compliance using the procedures in paragraphs (e)(1)(ix)(A) through (E) of this section.

(A) You must establish a site-specific condenser performance curve according to § 60.5417c(f)(2).

(B) You must calculate the daily average condenser outlet temperature in accordance with § 60.5417c(e).

(C) You must determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (e)(1)(ix)(B) of this section and the condenser performance curve established under paragraph (e)(1)(ix)(A) of this section.

(D) Except as provided in paragraphs (e)(1)(ix)(D)(*1*) and (*2*) of this section, at the end of each operating day, you must calculate the 365-day rolling average TOC emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (e)(1)(ix)(C) of this section.

(*1*) After the compliance dates specified in § 60.5387c, if you have less than 120 days of data for determining average TOC emission reduction, you must calculate the average TOC emission reduction for the first 120 days of operation after the compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the 120-day average TOC emission reduction is equal to or greater than 95.0 percent.

(*2*) After 120 days and no more than 364 days of operation after the compliance date specified in § 60.5387c, you must calculate the average TOC emission reduction as the TOC emission reduction averaged over the number of days between the current day and the applicable compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the average TOC emission reduction is equal to or greater than 95.0 percent.

(E) If you have data for 365 days or more of operation, you have demonstrated compliance with the TOC emission reduction if the rolling 365-day average TOC emission reduction calculated in paragraph (e)(1)(ix)(D) of this section is equal to or greater than 95.0 percent.

(x) During each inspection conducted using an OGI camera under § 60.5397c and during each periodic screening event or each inspection conducted using an OGI camera under § 60.5398c, you must observe each enclosed combustion device and flare to determine if it is operating properly. You must determine whether there is a flame present and whether any uncontrolled emissions from the control device are visible with the OGI camera or the technique used to conduct the periodic screening event. During each inspection conducted under § 60.5397c using AVO, you must observe each enclosed combustion device and flare to determine if it is operating properly. Visually confirm that the pilot or combustion flame is lit and that the pilot or combustion flame is operating properly.

(xi) If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d), you must comply with paragraphs (e)(1)(xi)(A) through (E) of this section.

(A) You must maintain the combustion efficiency at or above 95.0 percent. Alternatively, if the alternative test method does not directly monitor combustion efficiency, you must comply with the applicable requirements in paragraphs (e)(1)(xi)(A)(*1*) and (*2*) of this section.

(*1*) Maintain the NHV_{cz} at or above 270 Btu/scf.

(*2*) For flares or enclosed combustion devices with perimeter assist air, maintain the NHV_{dil} at or above 22 Btu/sqft. If the only assist air provided to the flare or enclosed combustion device is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, you are only required to comply with the NHV_{cz} limit specified in paragraph (e)(1)(xi)(A)(*1*) of this section.

(B) You must calculate the value of the applicable monitored metric(s) in accordance with the approved alternative test method. Compliance with the limit is achieved when the calculated values are within the range specified in paragraph (e)(1)(xi)(A) of this section.

(C) You must conduct monitoring using the alternative test method at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(D) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report values to demonstrate compliance with the limits specified in paragraph (e)(1)(xi)(A) of this section. You must use all the data collected during all other required data collection periods to assess the operation of the control device and associated control system.

(E) Failure to collect required data is a deviation of the monitoring requirements.

(2) You must maintain the records as specified in § 60.5420c(c)(10) and (12).

(3) You must comply with the reporting requirements in § 60.5420c(b)(10) through (12).

(f) *Reciprocating compressor designated facility.* For each reciprocating compressor designated facility complying with § 60.5393c(a) through (c), you must demonstrate continuous compliance according to paragraphs (f)(1), (3), (5), and (6) of this section. For each reciprocating compressor designated facility complying with § 60.5393c(d)(1) or (2), you must demonstrate continuous compliance according to paragraphs (f)(2), (5), and (6) of this section. For each reciprocating compressor affected facility complying with § 60.5393c(d)(3), you must demonstrate continuous compliance according to paragraphs (f)(3) through (6) of this section.

(1) You must maintain the volumetric flow rate at or below 2 scfm per cylinder (or at or below the combined volumetric flow rate determined by multiplying the number of cylinders by 2 scfm), and you must conduct the required volumetric flow rate measurement of your reciprocating compressor rod packing vents in accordance with § 60.5393c(b) or (c) on or before 8,760 hours of operation after your last volumetric flow rate measurement which demonstrated compliance with the applicable volumetric flow rate.

(2) You must operate the rod packing emissions collection system to route emissions to a control device or to a process through a closed vent system and continuously comply with the cover and closed vent requirements of § 60.5416c. If you comply with § 60.5393c(d) by using a control device, you also must comply with the requirements in paragraph (e) of this section.

(3) You must continuously monitor the number of hours of operation for each reciprocating compressor affected facility since initial startup, since 60 days after the state plan submittal deadline (as specified in § 60.5362c(c)), since the previous flow rate measurement, or since the date of the most recent reciprocating compressor rod packing replacement, whichever date is latest.

(4) You must replace the reciprocating compressor rod packing on or before the total number of hours of operation reaches 8,760 hours.

(5) You must submit the annual reports as required in § 60.5420c(b)(1), (5), and (b)(10)(i) through (iv), as applicable.

(6) You must maintain records as required in § 60.5420c(c)(4), (7) through (9), and (11), as applicable.

(g) *Process controller designated facility.* To demonstrate continuous compliance with GHG emission standards for your process controller designated facility as required by § 60.5394c, you must comply with the paragraphs (g)(1) through (4) of this section.

(1) You must demonstrate that your process controller designated facility does not emit any methane to the atmosphere by meeting the requirements of paragraphs (g)(1)(i) or (ii) of this section.

(i) If you comply by routing the emissions to a process, you must comply with the closed vent system inspection and monitoring requirements of § 60.5416c.

(ii) If you comply by using a self-contained natural gas-driven process controller, you must conduct the no identifiable emissions inspections required by § 60.5416c(b).

(2) For each process controller designated facility located at a site in Alaska that does not have access to electrical power, and that complies by reducing methane emissions from all controllers in the process controller designated facility by 95.0 percent in

accordance with § 60.5494c(b)(3), you must comply with comply with the closed vent requirements of § 60.5416c and the requirements in paragraph (e) of this section for the control device.

(3) You must submit the annual report for your process controller as required in § 60.5420c(b)(1), (6), and (10) through (12), as applicable.

(4) You must maintain the records as specified in § 60.5420c(c)(5), (7), (9), and (11) for each process controller designated facility, as applicable.

(h) *Storage vessel designated facility.* For each storage vessel designated facility, you must demonstrate continuous compliance with the requirements of § 60.5396c according to paragraphs (h)(1) through (10) of this section, as applicable.

(1) For each storage vessel designated facility complying with the requirements of § 60.5396c(a)(2), you must demonstrate continuous compliance according to paragraphs (h)(5) and (h)(9) and (10) of this section.

(2) For each storage vessel designated facility complying with the requirements of § 60.5396c(a)(3), you must demonstrate continuous compliance according to paragraphs (h)(2)(i), (ii), or (iii) of this section, as applicable, and (h)(9) and (10) of this section.

(i) You must maintain the uncontrolled actual methane emissions from the storage vessel designated facility at less than 14 tpy.

(ii) You must comply with paragraph (h)(5) of this section as soon as liquids from the well are routed to the storage vessel designated facility following fracturing or refracturing according to the requirements of § 60.5396c(a)(3)(i).

(iii) You must comply with paragraph (h)(5) of this section within 30 days of the monthly determination according to the requirements of § 60.5396c(a)(3)(ii), where the monthly emissions determination indicates that methane emissions from your storage vessel designated facility increase to 14 tpy or greater and the increase is not associated with fracturing or refracturing of a well feeding the storage vessel designated facility.

(3) For each storage vessel designated facility or portion of a storage vessel designated facility removed from service, you must demonstrate compliance with the requirements of § 60.5396c(c)(1) or (2) by complying with paragraphs (h)(6), (7), (9), and (10) of this section.

(4) For each storage vessel designated facility or portion of a storage vessel designated facility returned to service, you must demonstrate compliance with the requirements of § 60.5396c(c)(3) and (4) by complying with paragraphs (h)(8) through (10) of this section.

(5) For each storage vessel designated facility, you must comply with paragraphs (h)(5)(i) and (ii) of this section.

(i) You must reduce methane emissions as specified in § 60.5396c(a)(2).

(ii) For each control device installed to meet the requirements of § 60.5396c(a)(2), you must demonstrate continuous compliance with the performance requirements of § 60.5412c for each storage vessel designated facility using the procedure specified in paragraph (h)(5)(ii)(A) and (B) of this section. When routing emissions to a process, you must demonstrate continuous compliance as specified in paragraph (h)(5)(ii)(A) of this section.

(A) You must comply with § 60.5416c for each cover and closed vent system.

(B) You must comply with the requirements specified in paragraph (e) of this section.

(6) You must completely empty and degas each storage vessel, such that each storage vessel no longer contains crude oil, condensate, produced water or intermediate hydrocarbon liquids. For a portion of a storage vessel designated facility to be removed from service, you must completely empty and degas the storage vessel(s), such that the storage vessel(s) no longer contains crude oil, condensate, produced water or intermediate hydrocarbon liquids. A storage vessel where liquid is left on walls, as bottom clingage or in pools due to floor irregularity is considered to be completely empty.

(7) You must disconnect the storage vessel(s) from the tank battery by isolating the storage vessel(s) from the tank battery such that the storage vessel(s) is no longer manifolded to the tank battery by liquid or vapor transfer.

(8) You must determine the designated facility status of a storage vessel returned to service as provided in § 60.5386c(e)(5).

(9) You must submit the annual reports as required by § 60.5420c(b)(1) and (7) and (b)(10)(i) through (iv).

(10) You must maintain the records as required by § 60.5420c(c)(6) through (9) and (11), as applicable.

(i) *Process unit equipment designated facility.* For each process unit equipment designated facility, you must demonstrate continuous compliance with the requirements of § 60.5400c according to paragraphs (i)(1) through (4) and (11) through (15) of this section, unless you meet and comply with the exception in § 60.5402c(b), (e), or (f) or meet the exemption in § 60.5402c(c). Alternatively, if you comply with the GHG standards for process unit designated facilities using the standards in § 60.5401c, you must comply with paragraphs (i)(5) through (15) of this section, unless you meet the exemption in § 60.5402c(b) or (c) or the exception in § 60.5402c(e) and (f).

(1) You must conduct monitoring for 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).

(2) You must conduct monitoring as required by § 60.5400c(c) for each pump in light liquid service.

(3) You must conduct monitoring as required by § 60.5400c(d) for each pressure relief device in gas/vapor service.

(4) You must comply with the equipment requirements for each open-ended valve or line as required by § 60.5400c(e).

(5) You must conduct monitoring for each pump in light liquid service as required by § 60.5401c(b).

(6) You must conduct monitoring for each pressure relief device in gas/vapor service as required by § 60.5401c(c).

(7) You must comply with the equipment requirements for each open-ended valve or line as required by § 60.5401c(d).

(8) You must conduct monitoring for each valve in gas/vapor or light liquid service as required by § 60.5401c(f).

(9) You must conduct monitoring for each pump, valve, and connector in heavy liquid service and each pressure relief device in light liquid or heavy liquid service as required by § 60.5401c(g).

(10) You must conduct monitoring for each connector in gas/vapor or light liquid service as required by § 60.5401c(h).

(11) You must collect emissions and meet the closed vent system requirements as required by § 60.5416c for each pump equipped with a dual mechanical seal system that degasses the barrier fluid reservoir to a process or a control device, each pump which captures and transports leakage from the seal or seals to a process or control device, or each pressure relief device which captures and transports leakage through the pressure relief device to a process or control device.

(12) You must comply with the requirements specified in paragraph (e) of this section.

(13) You must tag and repair each identified leak as required in § 60.5400c(h) or § 60.5401c(i), as applicable.

(14) You must submit semiannual reports as required by § 60.5422c and the annual reports in § 60.5420c(b)(10)(i) through (iv), as applicable.

(15) You must maintain the records specified by § 60.5420c(c)(7), (c)(9), and (c)(11) as applicable and § 60.5421c.

(j) *Continuous compliance.* For each fugitive emissions components designated facility, you must demonstrate continuous compliance with the requirements of § 60.5397c(a) according to paragraphs (j)(1) through (4) of this section.

(1) You must conduct periodic monitoring surveys as required in § 60.5397c(e) and (g).

(2) You must repair each identified source of fugitive emissions as required in § 60.5397c(h).

(3) You must submit annual reports for fugitive emissions components designated facilities as required in § 60.5420c(b)(1) and (8).

(4) You must maintain records as specified in § 60.5420c(c)(13).

■ 60. Amend § 60.5416c by revising paragraph (a) introductory text and (a)(3)(iii) to read as follows:

§ 60.5416c What are the initial and continuous cover and closed vent system inspection and monitoring requirements?

* * * * *

(a) *Inspections for closed vent systems, covers, and bypass devices.* If you install a control device or route emissions to a process, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (a)(1) and (2) of this section, inspect each cover according to the procedures and schedule specified in paragraph (a)(3) of this section, and inspect each bypass device according to the procedures of paragraph (a)(4) of this section, except as provided in paragraphs (b)(7) and (8) of this section.

* * * * *

(3) * * *

(iii) Conduct AVO inspections in accordance with and at the same frequency as specified for fugitive emissions components designated facilities located at the same type of site as specified in § 60.5397c(g). Process unit equipment designated facilities must conduct annual AVO inspections concurrent with the inspections required by paragraph (a)(1)(ii) of this section.

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■ 61. Amend § 60.5417c by revising and republishing the introductory text and paragraphs (a), (d)(8) introductory text, and (d)(8)(iii) to read as follows:

§ 60.5417c What are the continuous monitoring requirements for my control devices?

You must meet the requirements of this section to demonstrate continuous compliance for each control device used to meet emission standards for your well, centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, and process unit equipment designated facilities.

(a) For each control device used to comply with the emission reduction standard in § 60.5391c(b) for well designated facilities, § 60.5392c(a)(3) for centrifugal compressor designated facilities, § 60.5393c(d)(2) for reciprocating compressor designated facilities, § 60.5394c(b)(3) for your process controller designated facility in Alaska, § 60.5395c(b)(1) for your pumps designated facility, § 60.5396c(a)(2) for your storage vessel designated facility, or either § 60.5400c(f) or § 60.5401c(e) for your process equipment designated facility, you must install and operate a continuous parameter monitoring system for each control device as specified in paragraphs (c) through (h) of this section, except as provided for in paragraph (b) of this section. If you install and operate a flare in accordance with § 60.5412c(a)(3), you are exempt from the requirements of paragraph (f) of this section. If you operate an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d), you must operate the control device as specified in paragraph (i) of this section instead of using the procedures specified in paragraphs (c) through (h) of this section. You must keep records and report in accordance with paragraph (j) of this section.

* * * * *

(d) * * *

(8) For an enclosed combustion device, other than those listed in paragraphs (d)(1) through (3) and (7) of this section, or for a flare, continuous monitoring systems as specified in paragraphs (d)(8)(i) through (iv) of this section and visible emission observations conducted as specified in paragraph (d)(8)(v) of this section. Additionally, for enclosed combustion devices or flares that are air-assisted or steam-assisted, the continuous monitoring systems specified in paragraph (d)(8)(vi) of this section.

* * * * *

(iii) For an unassisted or pressure-assisted flare or enclosed combustion device, if you demonstrate according to the methods described in paragraphs (d)(8)(iii)(A) through (F) of this section that the NHV of the inlet gas to the enclosed combustion device or flare consistently exceeds the applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), continuous monitoring of the NHV is not required, but you must conduct the ongoing sampling in paragraph (d)(8)(iii)(G) of this section. For flares and enclosed combustion devices that use only perimeter assist air and do not use steam assist or premix assist air, if you demonstrate according to the methods described in paragraphs (d)(8)(iii)(A) through (F) of this section that the NHV of the inlet gas to the enclosed combustion device or flare consistently exceeds 300 Btu/scf, continuous monitoring of the NHV is not required, but you must conduct the ongoing sampling in paragraph (d)(8)(iii)(G) of this section. For an unassisted or pressure-assisted flare or enclosed combustion device, in lieu of conducting the demonstration outlined in paragraphs (d)(8)(iii)(A) through (D) of this section, you may conduct the demonstration outlined in paragraph (d)(8)(iii)(H) of this section, but you must still comply with paragraphs (d)(8)(iii)(E) through (G) of this section.

(A) Continuously monitor or collect a sample of the inlet gas to the enclosed combustion device or flare twice daily to determine the average NHV of the gas stream for 14 consecutive operating days. If you do not continuously monitor the NHV, the minimum time of collection for each individual sample be at least one hour. Consecutive samples must be separated by at least 6 hours. If inlet gas flow is intermittent such that there are not at least 28 samples over the 14 operating day period, you must continue to collect samples of the inlet gas beyond the 14 operating day period until you collect a minimum of 28 samples.

(B) If you collect samples twice per day, count the number of samples where the NHV value is less than 1.2 times the applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii) (*i.e.,* values that are less than 240, 360, or 960 Btu/scf, as applicable) during the sample collection period in paragraph (d)(8)(iii)(A) of this section.

(C) If you continuously sample the inlet stream for 14 days, count the number of hourly average NHV values that are less than the applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii) (*i.e.,* values that are less than 200, 300, or 800 Btu/scf, as applicable), during the sample collection period in paragraph (d)(8)(iii)(A) of this section.

(D) If there are no samples counted under paragraph (d)(8)(iii)(B) of this section or there are no hourly values counted under paragraph (d)(8)(iii)(C) of this section, the gas stream is considered to consistently exceed the applicable NHV operating limit and on-going continuous monitoring is not required.

(E) If process operations are revised that could impact the NHV of the gas sent to the enclosed combustion device or flare, such as the removal or addition of process equipment, and at any time the Administrator requires, re-evaluation of the gas stream must be performed according to paragraphs (d)(8)(iii)(A) through (D) of this section to ensure the gas stream still consistently exceeds the applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii).

(F) When collecting samples under paragraph (d)(8)(iii)(A) of this section, the owner or operator must account for any sources of inert gases that can be sent to the enclosed combustion device or flare (*e.g.,* streams from compressors in acid gas service, streams from enhanced oil recovery facilities). The report in § 60.5420c(b)(10)(v)(I) and the records of the demonstration in § 60.5420c(c)(10)(vi) must note whether the enclosed combustion device or flare has the potential to receive inert gases, and if so, whether the sampling included periods where the highest percentage of inert gases were sent to the enclosed combustion device or flare. If the introduction of inerts is intermittent and does not occur during the initial demonstration, the introduction of inerts will be considered a revision to process operations that triggers a re-evaluation under paragraph (d)(8)(iii)(E) of this section. If conditions at the site did not allow sampling during periods where the introduction of inert gases was at the highest percentage possible, increasing the percentage of inerts will be considered a revision to process operations that triggers a re-evaluation under paragraph (d)(8)(iii)(E) of this section.

(G) You must collect three samples of the inlet gas to the enclosed combustion device or flare at least once every 5 years. The minimum time of collection for each individual sample must be at least one hour. The samples must be taken during the period with the lowest expected NHV (*i.e.,* the period with the highest percentage of inerts). The first set of periodic samples must be taken, or continuous monitoring commenced, no later than 60 calendar months following the last sample taken under paragraph (d)(8)(iii)(A) of this section. Subsequent periodic samples must be taken, or continuous monitoring commenced, no later than 60 calendar months following the previous sample. If any sample has an NHV value less than 1.2 times the applicable operating limit specified in § 60.5415c(e)(1)(vii)(B) or (C), or this paragraph (d)(8)(iii) (*i.e.,* values that are less than 240, 360, or 960 Btu/scf, as applicable), you must conduct the monitoring required by paragraph (d)(8)(ii) of this section.

(H) You may request an alternative test method under § 60.5412c(d) to demonstrate that the flare or enclosed combustion device reduces methane and VOC in the gases vented to the device by 95.0 percent by weight or greater. You must use an alternative test method that demonstrates compliance with the combustion efficiency limit; you may not use an alternative test method that demonstrates compliance with NHV_{cz} and NHV_{dil} in lieu of measuring combustion efficiency directly. You must measure data values at the frequency specified in the alternative test method and conduct the quality assurance and quality control requirements outlined in the alternative test method at the frequency outlined in the alternative test method. You must monitor the combustion efficiency of the flare continuously for 14 days. If there are no values of the combustion efficiency measured by the alternative test method that are less than 95.0 percent, the gas stream is considered to consistently exceed the applicable NHV operating limit, and you are not required to continuously monitor the NHV of the inlet gas to the flare or enclosed combustion device.

* * * * *

■ 62. Amend § 60.5420c by revising and republishing paragraphs (a) through (c) and paragraph (d) introductory text to read as follows:

§ 60.5420c What are my notification, reporting, and recordkeeping requirements?

(a) *Notifications.* You must submit notifications according to paragraphs (a)(1) and (2) of this section if you own or operate one or more of the designated facilities specified in § 60.5386c for which you commenced construction, modification, or reconstruction on or before December 6, 2022. You must submit the notification in paragraph (a)(3) of this section if you undertake well closure activities as specified in § 60.5397c(l).

(1) *Notification of compliance report.* For each designated facility subject to the requirements specified under this subpart, an owner or operator is required to submit a statement of compliance with the applicable requirements of this subpart on or before 60 days after the state plan compliance date. Where a designated facility's compliance status is consistent with what was specified in the final compliance plan increment of progress report, the notification of compliance report would include a statement indicating that compliance is consistent with what was specified in the designated facility's final compliance plan. Where a designated facility's compliance status differs from what was specified in the final compliance plan increment of progress report, the notification of compliance report would indicate how the designated facility's status differs from what was stated in the final compliance plan.

(2) *Notifications.* If you own or operate a process unit equipment designated facility located at an onshore natural gas processing plant, you must submit the notifications required in §§ 60.7(a)(1), (3), and (4) and 60.15(d). If you own or operate a well, centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, collection of fugitive emissions components at a well site, or collection of fugitive emissions components at a compressor station designated facility, you are not required to submit the notifications required in §§ 60.7(a)(1), (3), and (4) and 60.15(d).

(3) *Notification to Administrator.* An owner or operator who commences well closure activities must submit the following notices to the Administrator according to the schedule in paragraph (a)(3)(i) and (ii) of this section. The notification shall include contact information for the owner or operator; the United States Well Number; 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. You must submit notifications in portable document format (PDF) following the procedures specified in paragraph (d) of this section.

(i) You must submit a well closure plan to the Administrator within 30 days of the cessation of production from all wells located at the well site.

(ii) You must submit a notification of the intent to close a well site 60 days before you begin well closure activities.

(b) *Reporting requirements.* You must submit annual reports containing the information specified in paragraphs (b)(1) through (13) of this section following the procedure specified in paragraph (b)(14) of this section. You must submit performance test reports as specified in paragraph (b)(11) or (12) of

this section, if applicable. The initial annual report is due no later than 90 days after the end of the initial compliance period as determined according to § 60.5410c. Subsequent annual reports are due no later than the same date each year as the initial annual report. If you own or operate more than one designated facility, you may submit one report for multiple designated facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (13) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period. You must submit the information in paragraph (b)(1)(v) of this section, as applicable, for your well designated facility which undergoes a change of ownership during the reporting period, regardless of whether reporting under (b)(2) through (3) of this section is required for the well designated facility.

(1) The general information specified in paragraphs (b)(1)(i) through (v) of this section is required for all reports.

(i) The company name, facility site name associated with the designated facility, U.S. Well ID or U.S. Well ID associated with the designated facility, if applicable, and address of the designated facility. If an address is not available for the site, include a description of the site location and provide the latitude and longitude coordinates of the site in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(ii) An identification of each designated facility being included in the annual report.

(iii) Beginning and ending dates of the reporting period.

(iv) A certification by a certifying official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. If your report is submitted via CEDRI, the certifier's electronic signature during the submission process replaces the requirement in this paragraph (b)(1)(iv).

(v) Identification of each well designated facility for which ownership changed due to sale or transfer of ownership including the United States Well Number; the latitude and longitude coordinates of the well designated facility in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983; and the information in paragraph (b)(1)(v)(A) or (B) of this section, as applicable.

(A) The name and contact information, including the phone number, email address, and mailing address, of the owner or operator to which you sold or transferred ownership of the well designated facility identified in paragraph (b)(1)(v) of this section.

(B) The name and contact information, including the phone number, email address, and mailing address, of the owner or operator from whom you acquired the well designated facility identified in paragraph (b)(1)(v) of this section.

(2) For each well designated facility that is subject to § 60.5390c(a)(1) or (2), your annual report is required to include the information specified in paragraphs (b)(2)(i) and (ii) of this section, as applicable.

(i) For each well designated facility where all gas well liquids unloading operations comply with § 60.5390c(a)(1), your annual report must include the information specified in paragraphs (b)(2)(i)(A) through (C) of this section, as applicable.

(A) Identification of each well designated facility (U.S. Well ID or U.S. Well ID associated with the well designated facility) that conducts a gas well liquid unloading operation during the reporting period using a method that does not vent to the atmosphere and the technology or technique used. If more than one non-venting technology or technique is used, you must identify all of the differing non-venting liquids unloading methods used during the reporting period.

(B) Number of gas well liquids unloading operations conducted during the year where the well designated facility identified in (b)(2)(i)(A) had unplanned venting to the atmosphere and best management practices were conducted according to your best management practice plan, as required by § 60.5390c(c). If no venting events occurred, the number would be zero. Other reported information required to be submitted where unplanned venting occurs is specified in paragraphs (b)(2)(i)(B)(*1*) and (*2*) of this section.

(*1*) Log of best management practice plan steps used during the unplanned venting to minimize emissions to the maximum extent possible.

(*2*) The number of liquids unloading events during the year where deviations from your best management practice plan occurred, the date and time the deviation began, the duration of the deviation in hours, documentation of why best management practice plan steps were not followed, and what steps, in lieu of your best management practice plan steps, were followed to minimize emissions to the maximum extent possible.

(C) The number of liquids unloading events where unplanned emissions are vented to the atmosphere during a gas well liquids unloading operation where you complied with best management practices to minimize emissions to the maximum extent possible.

(ii) For each well designated facility where all gas well liquids unloading operations comply with § 60.5390c(b) and (c) best management practices, your annual report must include the information specified in paragraphs (b)(2)(ii)(A) through (E) of this section.

(A) Identification of each well designated facility that conducts a gas well liquids unloading during the reporting period.

(B) Number of liquids unloading events conducted during the reporting period.

(C) Log of best management practice plan steps used during the reporting period to minimize emissions to the maximum extent possible.

(D) The number of liquids unloading events during the year that best management practices were conducted according to your best management practice plan.

(E) The number of liquids unloading events during the year where deviations from your best management practice plan occurred, the date and time the deviation began, the duration of the deviation in hours, documentation of why best management practice plan steps were not followed, and what steps, in lieu of your best management practice plan steps, were followed to minimize emissions to the maximum extent possible.

(3) For each associated gas well at your well designated facility that is subject to § 60.5391c, your annual report is required to include the applicable information specified in paragraphs (b)(3)(i) through (v) of this section, as applicable.

(i) For each associated gas well at your well designated facility that complies with § 60.5391c(a)(1), (2), (3), or (4) your annual report is required to include the information specified in paragraphs (b)(3)(i)(A) and (B) of this section.

(A) An identification of each existing associated gas well that complies with § 60.5391c(a)(1), (2), (3), or (4).

(B) The information specified in paragraphs (b)(3)(i)(B)(*1*) through (*3*) of

this section for each incident when the associated gas was temporarily routed to a flare or control device in accordance with § 60.5391c(c).

(*1*) The reason in § 60.5391c(c)(1), (2), (3), or (4) for each incident.

(*2*) The start date and time of each incident of routing associated gas to the flare or control device, along with the total duration in hours of each incident.

(*3*) Documentation that all CVS requirements specified in § 60.5411c(a) and (c) and all applicable flare or control device requirements specified in § 60.5412c were met during each period when the associated gas is routed to the flare or control device.

(ii) For all instances where you temporarily vent the associated gas in accordance with § 60.5391c(d), you must report the information specified in paragraphs (b)(3)(ii)(A) through (D) of this section. This information is required to be reported if you are routinely complying with § 60.5391c(a) or § 60.5391c(b) or temporarily complying with § 60.5391c(c). In addition to this information for each incident, you must report the cumulative duration in hours of venting incidents and the cumulative VOC and methane emissions in pounds for all incidents in the calendar year.

(A) The reason in § 60.5391c(d)(1), (2), or (3) for each incident.

(B) The start date and time of each incident of venting the associated gas, along with the total duration in hours of each incident.

(C) The methane emissions in pounds that were emitted during each incident.

(D) The total duration of venting for all incidents in the year, along with the cumulative methane emissions in pounds that were emitted.

(iii) For each associated gas well at your well designated facility that complies with the requirements of § 60.5391c(b) by routing your associated gas to a control device that reduces methane emissions by at least 95.0 percent, your annual report must include the information specified in paragraphs (b)(3)(iii)(A) through (C) of this section, and paragraph (D) or (E) of this section. The information in paragraphs (b)(3)(iii)(A) and (B) of this section is only required in the initial annual report.

(A) Identification of the associated gas well using the control device and the information in paragraphs (b)(10)(v) of this section.

(B) The information specified in paragraphs (b)(10)(i) through (iv) of this section.

(C) Identification of each instance when associated gas was vented and not routed to a control device that reduces methane emissions by at least 95.0 percent in accordance with paragraph (b)(3)(ii) of this section.

(D) For each associated gas well that complies with the requirements of § 60.5391c(b) because it has demonstrated that annual methane emissions are 40 tons per year or less, provide records of the calculation of annual methane emissions determined in accordance with § 60.5391c(e)(1).

(E) For each associated gas well facility that complies with the requirements of § 60.5391c(b) because it has demonstrated that it is not feasible to comply with § 60.5391c(a)(1), (2), (3), or (4) due to technical reasons, provide each annual demonstration and certification of the technical reason that it is not feasible to comply with § 60.5391c(a)(1), (2), (3), and (4) in accordance with § 60.5391c(b)(2)(i), (ii), and (iii).

(iv) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(v) For each deviation recorded as specified in paragraph (c)(2)(vi) of this section, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(4) For each centrifugal compressor that is a designated facility, the information specified in paragraphs (b)(4)(i) through (ix) of this section, as applicable.

(i) An identification of each centrifugal compressor.

(ii) For each deviation that occurred during the reporting period and recorded as specified in paragraph (c)(3) of this section, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(iii) If complying with § 60.5392c(a)(1) and (2) wet and dry seal centrifugal compressor requirements, the cumulative number of hours of operation since initial startup, since 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), or since the previous volumetric flow rate measurement, as applicable, which have elapsed prior to conducting your volumetric flow rate measurement or emissions screening.

(iv) A description of the method used and the results of the volumetric emissions measurement or emissions screening, as applicable.

(v) If required to comply with § 60.5392c(a)(5), the information specified in paragraphs (b)(10)(i) through (iv) of this section.

(vi) If complying with § 60.5392c(a)(4) with a control device, identification of the centrifugal compressor with the control device and the information in paragraph (b)(10)(v) of this section.

(vii) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(viii) Number and type of seals on delay of repair and explanation for each delay of repair.

(ix) Date of planned shutdown(s) that occurred during the reporting period if there are any seals that have been placed on delay of repair.

(5) For each reciprocating compressor designated facility, the information specified in paragraphs (b)(5)(i) through (vii) of this section, as applicable.

(i) The cumulative number of hours of operation since initial startup, since 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), since the previous volumetric flow rate measurement, or since the previous reciprocating compressor rod packing replacement, as applicable, which have elapsed prior to conducting your volumetric flow rate measurement or emissions screening. Alternatively, a statement that emissions from the rod packing are being routed to a process or control device through a closed vent system.

(ii) If applicable, for each deviation that occurred during the reporting period and recorded as specified in paragraph (c)(4)(i) of this section, the date and time the deviation began, duration of the deviation in hours and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(iii) A description of the method used and the results of the volumetric flow rate measurement or emissions screening, as applicable.

(iv) If complying with § 60.5393c(d)(1) or (2), the information in paragraphs (b)(10)(i) through (v) of this section.

(v) Number and type of rod packing replacements/repairs on delay of repair and explanation for each delay of repair.

(vi) Date of planned shutdown(s) that occurred during the reporting period if there are any rod packing replacements/repairs that have been placed on delay of repair.

(vii) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(6) For each process controller designated facility, the information specified in paragraphs (b)(6)(i) through (iii) of this section in your initial annual report and in subsequent annual reports for each process controller designated facility that is constructed, modified, or reconstructed during the reporting period. Each annual report must contain the information specified in paragraphs (b)(6)(iv) through (x) of this section for each process controller designated facility.

(i) An identification of each existing process controller that is driven by natural gas, as required by § 60.5394c(d), that allows traceability to the records required in paragraph (c)(5)(i) of this section.

(ii) For each process controller in the designated facility complying with § 60.5394c(a), you must report the information specified in paragraphs (b)(6)(ii)(A) and (B) of this section, as applicable.

(A) An identification of each process controller complying with § 60.5394c(a)(1) by routing the emissions to a process.

(B) An identification of each process controller complying with § 60.5394c(a)(2) by using a self-contained natural gas-driven process controller.

(iii) For each process controller designated facility located at a site in Alaska that does not have access to electrical power and that complies with § 60.5394c(b), you must report the information specified in paragraphs (b)(6)(iii)(A), (B), or (C) of this section, as applicable.

(A) For each process controller complying with § 60.5394c(b)(1) process controller bleed rate requirements, you must report the information specified in paragraphs (b)(6)(iii)(A)(*1*) and (*2*) of this section.

(*1*) The identification of process controllers designed and operated to achieve a bleed rate less than or equal to 6 scfh.

(*2*) Where necessary to meet a functional need, the identification and demonstration of why it is necessary to use a process controller with a natural gas bleed rate greater than 6 scfh.

(B) An identification of each intermittent vent process controller complying with the requirements in paragraph § 60.5394c(b)(2).

(C) An identification of each process controller complying with the requirements in § 60.5394c(b) by routing emissions to a control device in accordance with § 60.5394c(b)(3).

(iv) Identification of each process controller which changes its method of compliance during the reporting period and the applicable information specified in paragraphs (b)(6)(v) through (ix) of this section for the new method of compliance.

(v) For each process controller in the designated facility complying with the requirements of § 60.5394c(a) by routing the emissions to a process, you must report the information specified in paragraphs (b)(10)(i) through (iv) of this section.

(vi) For each process controller in the designated facility complying with the requirements of § 60.5394c(a) by using a self-contained natural gas-driven process controller, you must report the information specified in paragraphs (b)(6)(vi)(A) and (B) of this section.

(A) Dates of each inspection required under § 60.5416c(b); and

(B) Each defect or leak identified during each natural gas-driven-self-contained process controller system inspection, and the date of repair or date of anticipated repair if repair is delayed.

(vii) For each process controller in the designated facility complying with the requirements of § 60.5394c(b)(2), you must report the information specified in paragraphs (b)(6)(vii)(A) and (B) of this section.

(A) Dates and results of the intermittent vent process controller monitoring required by § 60.5394c(b)(2)(ii).

(B) For each instance in which monitoring identifies emissions to the atmosphere from an intermittent vent controller during idle periods, the date of repair or replacement or the date of anticipated repair or replacement if the repair or replacement is delayed, and the date and results of the re-survey after repair or replacement.

(viii) For each process controller designated facility complying with § 60.5394c(b)(3) by routing emissions to a control device, you must report the information specified in paragraph (b)(10) of this section.

(ix) For each deviation that occurred during the reporting period, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(x) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(6)(ii)(B) and (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(7) For each storage vessel designated facility, the information in paragraphs (b)(7)(i) through (x) of this section.

(i) An identification, including the location, of each existing storage vessel designated facility. The location of the storage vessel designated facility shall be in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(ii) Documentation of the methane emission rate determination according to § 60.5386c(e)(1) for each tank battery that became a designated facility during the reporting period or is returned to service during the reporting period.

(iii) For each deviation that occurred during the reporting period and recorded as specified in paragraph (c)(6)(iii) of this section, the date and time the deviation began, duration of the deviation in hours and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(iv) For each storage vessel designated facility complying with § 60.5396c(a)(2) with a control device, report the identification of the storage vessel designated facility with the control device and the information in paragraph (b)(10)(v) of this section.

(v) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(vi) If required to comply with § 60.5396c(b)(1), the information in paragraphs (b)(10)(i) through (iv) of this section.

(vii) You must identify each storage vessel designated facility that is removed from service during the reporting period as specified in § 60.5396c(c)(1)(ii), including the date the storage vessel designated facility was removed from service. You must identify each storage vessel that that is removed from service from a storage vessel designated facility during the reporting period as specified in § 60.5396c(c)(2)(iii), including identifying the impacted storage vessel designated facility and the date each storage vessel was removed from service.

(viii) You must identify each storage vessel designated facility or portion of a storage vessel designated facility returned to service during the reporting

period as specified in § 60.5396c(c)(4), including the date the storage vessel designated facility or portion of a storage vessel designated facility was returned to service.

(ix) You must identify each storage vessel designated facility that no longer complies with § 60.5396c(a)(3) and instead complies with § 60.5396c(a)(2). You must identify whether the change in the method of compliance was due to fracturing or refracturing or whether the change was due to an increase in the monthly emissions determination. If the change was due to an increase in the monthly emissions determination, you must provide documentation of the emissions rate. You must identify the date that you complied with § 60.5396c(a)(2) and must submit the information in (b)(7)(iii) through (vii) of this section.

(x) You must submit a statement that you are complying with § 60.112b(a)(1) or (2), if applicable, in your initial annual report.

(8) For the fugitive emissions components designated facility, report the information specified in paragraphs (b)(8)(i) through (iv) of this section, as applicable.

(i)(A) Designation of the type of site (*i.e.,* well site, centralized production facility, or compressor station) at which the fugitive emissions components designated facility is located.

(B) For the fugitive emissions components designated facility at a well site or centralized production facility that became a designated facility during the reporting period, you must include the date of the startup of production or the date of the first day of production after modification. For the fugitive emissions components designated facility at a compressor station that became a designated facility during the reporting period, you must include the date of startup or the date of modification.

(C) For the fugitive emissions components designated facility at a well site, you must specify what type of well site it is (*i.e.,* single wellhead only well site, small wellsite, multi-wellhead only well site, or a well site with major production and processing equipment).

(D) For the fugitive emissions components designated facility at a well site where during the reporting period you complete the removal of all major production and processing equipment such that the well site contains only one or more wellheads, you must include the date of the change to status as a wellhead only well site.

(E) For the fugitive emissions components designated facility at a well site where you previously reported under paragraph (b)(8)(i)(D) of this section the removal of all major production and processing equipment and during the reporting period major production and processing equipment is added back to the well site, the date that the first piece of major production and processing equipment is added back to the well site.

(F) For the fugitive emissions components designated facility at a well site where during the reporting period you undertake well closure requirements, the date of the cessation of production from all wells at the well site, the date you began well closure activities at the well site, and the dates of the notifications submitted in accordance with paragraph (a)(3) of this section.

(ii) For each fugitive emissions monitoring survey performed during the annual reporting period, the information specified in paragraphs (b)(8)(ii)(A) through (G) of this section.

(A) Date of the survey.

(B) Monitoring instrument or, if the survey was conducted by visual, audible, or olfactory methods, notation that AVO was used.

(C) Any deviations from the monitoring plan elements under § 60.5397c(c)(1), (2), (7), and (8) or (d) or a statement that there were no deviations from these elements of the monitoring plan.

(D) Number and type of components for which fugitive emissions were detected.

(E) Number and type of fugitive emissions components that were not repaired as required in § 60.5397c(h).

(F) Number and type of fugitive emission components (including designation as difficult-to-monitor or unsafe-to-monitor, if applicable) on delay of repair and explanation for each delay of repair.

(G) Date of planned shutdown(s) that occurred during the reporting period if there are any components that have been placed on delay of repair.

(iii) For well closure activities which occurred during the reporting period, the information in paragraphs (b)(8)(iii)(A) and (B) of this section.

(A) A status report with dates for the well closure activities schedule developed in the well closure plan. If all steps in the well closure plan are completed in the reporting period, the date that all activities are completed.

(B) If an OGI survey is conducted during the reporting period, the information in paragraphs (b)(8)(iii)(B)(*1*) through (*3*) of this section.

(*1*) Date of the OGI survey.

(*2*) Monitoring instrument used.

(*3*) A statement that no fugitive emissions were found, or if fugitive emissions were found, a description of the steps taken to eliminate those emissions, the date of the resurvey, the results of the resurvey, and the date of the final resurvey which detected no emissions.

(iv) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(9) For each pump designated facility, the information specified in paragraphs (b)(9)(i) through (iv) of this section in your initial annual report. Each annual report must contain the information specified in paragraphs (b)(9)(v) through (ix) of this section for each pump designated facility.

(i) The identification of each of your pumps that are driven by natural gas, as required by § 60.5395c(a) that allows traceability to the records required by paragraph (c)(14)(i) of this section.

(ii) For each pump designated facility for which there is a control device on site but it does not achieve a 95.0 percent emissions reduction, the certification that there is a control device available on site but it does not achieve a 95.0 percent emissions reduction required under § 60.5395c(b)(5). You must also report the emissions reduction percentage the control device is designed to achieve.

(iii) For each pump designated facility for which there is no control device or vapor recovery unit on site, the certification required under § 60.5395c(b)(6) that there is no control device or vapor recovery unit on site.

(iv) For each pump designated facility for which it is technically infeasible to route the emissions to a process or control device, the certification of technically infeasibility required under § 60.5395c(b)(7).

(v) For any pump designated facility which has previously reported as required under paragraphs (b)(9)(i) through (iv) of this section and for which a change in the reported condition has occurred during the reporting period, provide the identification of the pump designated facility and the date that the pump designated facility meets one of the change conditions described in paragraphs (b)(9)(v)(A) through (C) of this section.

(A) If you install a control device or vapor recovery unit, you must report that a control device or vapor recovery unit has been added to the site and that the pump designated facility now is

required to comply with § 60.5395c(b)(1) or (3), as applicable.

(B) If your pump designated facility previously complied with § 60.5395c(b)(1) or (3), as applicable, by routing emissions to a process or a control device and the process or control device is subsequently removed from the site or is no longer available such that there is no ability to route the emissions to a process or control device at the location, or that it is not technically feasible to capture and route the emissions to another control device or process located on site, report that you are no longer complying with the applicable requirements of § 60.5395c(b)(1) or (3) and submit the information provided in paragraphs (b)(9)(v)(B)(*1*) or (*2*) of this section.

(*1*) Certification that there is no control device or vapor recovery unit on site.

(*2*) Certification of the engineering assessment that it is technically infeasible to capture and route the emissions to another control device or process located on site.

(C) If any pump affected facility or individual natural gas-driven pump changes its method of compliance during the reporting period other than for the reasons specified in paragraphs (b)(9)(v)(A) and (B) of this section, identify the new compliance method for each natural gas-driven pump within the affected facility which changes its method of compliance during the reporting period and provide the applicable information specified in paragraphs (b)(9)(ii) through (iv) and (vi) through (viii) of this section for the new method of compliance.

(vi) For each pump designated facility complying with the requirements of § 60.5395c(a) or (b)(2) by routing the emissions to a process, you must report the information specified in paragraphs (b)(10)(i) through (iv) of this section.

(vii) For each pump designated facility complying with the requirements of § 60.5395c(b)(3) by routing the emissions to a control device, you must report the information required under paragraph (b)(10) of this section.

(viii) For each deviation that occurred during the reporting period, the date and time the deviation began, the duration of the deviation in hours, and a description of the deviation. If no deviations occurred during the reporting period, you must include a statement that no deviations occurred during the reporting period.

(ix) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (b)(10)(i) and (ii) of this section, you must provide the information specified in § 60.5424c.

(10) For each well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment designated facility which uses a closed vent system routed to a control device to meet the emissions reduction standard, you must submit the information in paragraphs (b)(10)(i) through (v) of this section. For each centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, or process unit equipment which uses a closed vent system to route to a process, you must submit the information in paragraphs (b)(10)(i) through (iv) of this section. For each centrifugal compressor, reciprocating compressor, and storage vessel equipped with a cover, you must submit the information in paragraphs (b)(10)(i) and (ii).

(i) Dates of each inspection required under § 60.5416c(a) and (b).

(ii) Each defect or emissions identified during each inspection and the date of repair or the date of anticipated repair if the repair is delayed.

(iii) Date and time of each bypass alarm or each instance the key is checked out if you are subject to the bypass requirements of § 60.5416c(a)(4).

(iv) You must submit the certification signed by the qualified professional engineer or in-house engineer according to § 60.5411c(c) for each closed vent system routing to a control device or process in the reporting year in which the certification is signed.

(v) If you comply with the emissions standard for your well, centrifugal compressor, reciprocating compressor, storage vessel, process controller, pump, or process unit equipment designated facility with a control device, the information in paragraphs (b)(10)(v)(A) through (L) of this section, unless you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d). If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d), the information in paragraphs (b)(10)(v)(A) through (C) and (L) through (P) of this section.

(A) Identification of the control device.

(B) Make, model, and date of installation of the control device.

(C) Identification of the designated facility controlled by the device.

(D) For each continuous parameter monitoring system used to demonstrate compliance for the control device, a unique continuous parameter monitoring system identifier and the make, model number, and date of last calibration check of the continuous parameter monitoring system.

(E) For each instance where there is a deviation of the control device in accordance with § 60.5417c(g)(1) through (3) or (5) through (7) include the date and time the deviation began, the duration of the deviation in hours, the type of the deviation (*e.g.,* NHV operating limit, lack of pilot or combustion flame, condenser efficiency, bypass line flow, visible emissions), and cause of the deviation.

(F) For each instance where there is a deviation of the continuous parameter monitoring system in accordance with § 60.5417c(g)(4) include the date and time the deviation began, the duration of the deviation in hours, and cause of the deviation.

(G) For each visible emissions test following return to operation from a maintenance or repair activity, the date of the visible emissions test or observation of the video surveillance output, the length of the observation in minutes, and the number of minutes for which visible emissions were present.

(H) If a performance test was conducted on the control device during the reporting period, provide the date the performance test was conducted. Submit the performance test report following the procedures specified in paragraph (b)(11) of this section.

(I) If a demonstration of the NHV of the inlet gas to the enclosed combustion device or flare was conducted during the reporting period in accordance with § 60.5417c(d)(8)(iii), an indication of whether this is a re-evaluation of vent gas NHV and the reason for the re-evaluation; the applicable required minimum vent gas NHV; if twice daily samples of the vent stream were taken, the number of hourly average NHV values that are less than 1.2 times the applicable required minimum NHV; if continuous NHV sampling of the vent stream was conducted, the number of hourly average NHV values that are less than the required minimum vent gas NHV; if continuous combustion efficiency monitoring was conducted using an alternative test method approved under § 60.5412c(d), the number of values of the combustion efficiency that were less than 95.0 percent; the resulting determination of whether NHV monitoring is required or not in accordance with § 60.5417c(d)(8)(iii)(D) or (H); and an indication of whether the enclosed combustion device or flare has the potential to receive inert gases, and if so, whether the sampling included periods where the highest percentage of

inert gases were sent to the enclosed combustion device or flare.

(J) If a demonstration was conducted in accordance with § 60.5417c(d)(8)(iv) that the maximum potential pressure of units manifolded to an enclosed combustion device or flare cannot cause the maximum inlet flow rate established in accordance with § 60.5417c(f)(1) or a flare tip velocity limit of 18.3 meter/second (60 feet/second) to be exceeded, an indication of whether this is a re-evaluation of the gas flow and the reason for the re-evaluation; the demonstration conducted; and applicable engineering calculations.

(K) For each periodic sampling event conducted under § 60.5417c(d)(8)(iii)(G), provide the date of the sampling, the required minimum vent gas NHV, and the NHV value for each vent gas sample.

(L) For each flare and enclosed combustion device, provide the date each device is observed with OGI in accordance with § 60.5415c(e)(1)(x) and whether uncombusted emissions were present. Provide the date each device was visibly observed during an AVO inspection in accordance with § 60.5415c(e)(1)(x), whether the pilot or combustion flame was lit at the time of observation, and whether the device was found to be operating properly.

(M) An identification of the alternative test method used.

(N) For each instance where there is a deviation of the control device in accordance with § 60.5417c(i)(6)(i) or (iii) through (v) include the date and time the deviation began, the duration of the deviation in hours, the type of the deviation (*e.g.,* NHV_{cz} operating limit, lack of pilot or combustion flame, visible emissions), and cause of the deviation.

(O) For each instance where there is a deviation of the data availability in accordance with § 60.5417c(i)(6)(ii) include the date of each operating day when monitoring data are not available for at least 75 percent of the operating hours.

(P) If no deviations occurred under paragraph (b)(10)(v)(N) or (O) of this section, a statement that there were no deviations for the control device during the annual report period.

(Q) Any additional information required to be reported as specified by the Administrator as part of the alternative test method approval under § 60.5412c(d).

(11) Within 60 days after the date of completing each performance test (see § 60.8) required by this subpart, except testing conducted by the manufacturer as specified in § 60.5413c(d), you must submit the results of the performance test following the procedures specified in paragraph (d) of this section. Data collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test must be included as an attachment in the ERT or alternate electronic file.

(12) For combustion control devices tested by the manufacturer in accordance with § 60.5413c(d), an electronic copy of the performance test results required by § 60.5413c(d) shall be submitted via email to *Oil__and__Gas__PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following website: *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry.*

(13) If you had a super-emitter event during the reporting period, the start date of the super-emitter event, the duration of the super-emitter event in hours, and the designated facility associated with the super-emitter event, if applicable.

(14) You must submit your annual report using the appropriate electronic report template on the Compliance and Emissions Data Reporting Interface (CEDRI) website for this subpart and following the procedure specified in paragraph (d) of this section. If the reporting form specific to this subpart is not available on the CEDRI website at the time that the report is due, you must submit the report to the Administrator at the appropriate address listed in § 60.4. Once the form has been available on the CEDRI website for at least 90 calendar days, you must begin submitting all subsequent reports via CEDRI. The date reporting forms become available will be listed on the CEDRI website. Unless the Administrator or delegated state agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted.

(c) *Recordkeeping requirements.* You must maintain the records identified as specified in § 60.7(f) and in paragraphs (c)(1) through (14) of this section. All records required by this subpart must be maintained either onsite or at the nearest local field office for at least 5 years. Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

(1) For each gas well liquids unloading operation at your well designated facility that is subject to § 60.5390c(a)(1) or (2), the records of each gas well liquids unloading operation conducted during the reporting period, including the information specified in paragraphs (c)(1)(i) through (iii) of this section, as applicable.

(i) For each gas well liquids unloading operation that complies with § 60.5390c(a)(1) by performing all liquids unloading events without venting of methane emissions to the atmosphere, comply with the recordkeeping requirements specified in paragraphs (c)(1)(i)(A) and (B) of this section.

(A) Identification of each well (*i.e.,* U.S. Well ID or U.S. Well ID associated with the well designated facility) that conducts a gas well liquids unloading operation during the reporting period without venting of methane emissions and the non-venting gas well liquids unloading method used. If more than one non-venting method is used, you must maintain records of all the differing non-venting liquids unloading methods used at the well designated facility complying with § 60.5390c(a)(1).

(B) Number of events where unplanned emissions are vented to the atmosphere during a gas well liquids unloading operation where you complied with best management practices to minimize emissions to the maximum extent possible.

(ii) For each gas well liquids unloading operation that complies with § 60.5390c(b) and (c) best management practices, maintain records documenting information specified in paragraphs (c)(1)(ii)(A) through (D) of this section.

(A) Identification of each well designated facility that conducts liquids unloading during the reporting period that employs best management practices to minimize emissions to the maximum extent possible.

(B) Documentation of your best management practice plan developed under paragraph § 60.5390c(c). You may

update your best management practice plan to include additional steps which meet the criteria in § 60.5390c(c).

(C) A log of each best management practice plan step taken to minimize emissions to the maximum extent possible for each gas well liquids unloading event.

(D) Documentation of each gas well liquids unloading event where deviations from your best management practice plan steps occurred, the date and time the deviation began, the duration of the deviation, documentation of best management practice plans steps were not followed, and the steps taken in lieu of your best management practice plan steps during those events to minimize emissions to the maximum extent possible.

(iii) For each well designated facility that reduces methane emissions from well designated facility gas wells that unload liquids by 95.0 percent by routing emissions to a control device through closed vent system under § 60.5390c(g), you must maintain the records in paragraphs (c)(1)(iii)(A) through (E) of this section.

(A) If you comply with the emission reduction standard with a control device, the information for each control device in paragraph (c)(10) of this section.

(B) Records of the closed vent system inspection as specified paragraph (c)(7) of this section.

(C) Records of the cover inspections as specified in paragraph (c)(8) of this section.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(9) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(11) of this section.

(2) For each associated gas well, you must maintain the applicable records specified in paragraphs (c)(2)(i) or (ii) and (vi) of this section, as applicable.

(i) For each associated gas well that complies with the requirements of § 60.5391c(a)(1), (2), (3), or (4), you must keep the records specified in paragraphs (c)(2)(i)(A) and (B) of this section.

(A) Documentation of the specific method(s) in § 60.5391c(a)(1), (2), (3), or (4) that was used.

(B) For instances where you temporarily route the associated gas to a flare or control device in accordance with § 60.5391c(c), you must keep the records specified in paragraphs (c)(2)(i)(B)(*1*) through (*3*) of this section.

(*1*) The reason in § 60.5391c(c)(1), (2), (3), or (4) for each incident.

(*2*) The date of each incident, along with the times when routing the associated gas to the flare or control device started and ended, along with the total duration of each incident.

(*3*) Documentation that all CVS requirements specified in § 60.5411c(a) and (c) and all applicable flare or control device requirements specified in § 60.5412c are met during each period when the associated gas is routed to the flare or control device.

(ii) For instances where you temporarily vent the associated gas in accordance with § 60.5391c(d), you must keep the records specified in paragraphs (c)(2)(ii)(A) through (D) of this section. These records are required if you are routinely complying with § 60.5391c(a) or § 60.5391c(b) or temporarily complying with § 60.5391c(c).

(A) The reason in § 60.5391c(d)(1), (2), or (3) for each incident.

(B) The date of each incident, along with the times when venting the associated gas started and ended, along with the total duration of each incident.

(C) The methane emissions that were emitted during each incident.

(D) The cumulative duration of venting incidents and methane emissions for all incidents in each calendar year.

(iii) For each associated gas well that complies with the requirements of § 60.5391c(b) because it has demonstrated that annual methane emissions are 40 tons per year or less at the initial compliance date, maintain records of the calculation of annual methane emissions determined in accordance with § 60.5391c(e)(1).

(iv) For each associated gas well at your well that complies with the requirements of § 60.5391c(b) because it has demonstrated that it is not feasible to comply with § 60.5391c(a)(1), (2), (3), or (4) due to technical reasons, records of each annual demonstration and certification of the technical reason that it is not feasible to comply with § 60.5391c(a)(1), (2), (3), and (4) in accordance with § 60.5391c(b)(2)(i), (ii), and (iii), as well as the records required by paragraph (c)(2)(v) of this section.

(v) For each associated gas well that complies with the requirements of § 60.5391c(b) by routing your associated gas to a flare or control device that achieves a 95.0 reduction in methane emissions, the records in paragraphs (c)(2)(v)(A) through (E) of this section.

(A) Identification of each instance when associated gas was vented and not routed to a control device that reduces methane emissions by at least 95.0 percent in accordance with paragraph (c)(2)(iii) of this section.

(B) If you comply with the emission reduction standard in § 60.5391c with a control device, the information for each control device in paragraph (c)(10) of this section.

(C) Records of the closed vent system inspection as specified paragraph (c)(7) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (c)(7) of this section, you must maintain records of the information specified in § 60.5424c.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(9) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(11) of this section.

(vi) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(3) For each centrifugal compressor designated facility, you must maintain the records specified in paragraphs (c)(3)(i) through (iii) of this section.

(i) For each centrifugal compressor designated facility, you must maintain records of deviations in cases where the centrifugal compressor was not operated in compliance with the requirements specified in § 60.5392c, including a description of each deviation, the date and time each deviation began and the duration of each deviation.

(ii) For each wet seal compressor complying with the emissions reduction standard in § 60.5392c(a)(3) and (4), you must maintain the records in paragraphs (c)(3)(ii)(A) through (E) of this section. For each wet seal compressor complying with the alternative standard in § 60.5392c(a)(3) and (5) by routing the closed vent system to a process, you must maintain the records in paragraphs (c)(3)(ii)(B) through (E) of this section.

(A) If you comply with the emission reduction standard in § 60.5392c(a)(3) and (4) with a control device, the information for each control device in paragraph (c)(10) of this section.

(B) Records of the closed vent system inspection as specified paragraph (c)(7) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (c)(7) of this section, you must maintain records of the information specified in § 60.5424c.

(C) Records of the cover inspections as specified in paragraph (c)(8) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraph (c)(8) of this section, you must maintain the information specified in § 60.5424c.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(9) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(11) of this section.

(iii) For each centrifugal compressor designated facility using dry seals or wet seals and each self-contained wet seal centrifugal compressor and complying with the standard in § 60.5392c(a)(1) and (2), you must maintain the records specified in paragraphs (c)(3)(iii)(A) through (H) of this section.

(A) Records of the cumulative number of hours of operation since initial startup, since 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), or since the previous volumetric flow rate measurement, as applicable.

(B) A description of the method used and the results of the volumetric flow rate measurement or emissions screening, as applicable.

(C) Records for all flow meters, composition analyzers and pressure gauges used to measure volumetric flow rates as specified in paragraphs (c)(3)(iii)(C)(*1*) through (*6*) of this section.

(*1*) Description of standard method published by a consensus-based standards organization or industry standard practice.

(*2*) Records of volumetric flow rate emissions calculations conducted according to § 60.5392c(a)(2), as applicable.

(*3*) Records of manufacturer operating procedures and measurement methods.

(*4*) Records of manufacturer's recommended procedures or an appropriate industry consensus standard method for calibration and results of calibration, recalibration and accuracy checks.

(*5*) Records which demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions. You must include the date of the demonstration, the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations. If adjustments were made to the mathematical relationships, a record and description of such adjustments.

(*6*) Record of each initial calibration or a recalibration which failed to meet the required accuracy specification and the date of the successful recalibration.

(D) Date when performance-based volumetric flow rate is exceeded.

(E) The date of successful repair of the compressor seal, including follow-up performance-based volumetric flow rate measurement to confirm successful repair.

(F) Identification of each compressor seal placed on delay of repair and explanation for each delay of repair.

(G) For each compressor seal or part needed for repair placed on delay of repair because of replacement seal or part unavailability, the operator must document: the date the seal or part was added to the delay of repair list, the date the replacement seal or part was ordered, the anticipated seal or part delivery date (including any estimated shipment or delivery date provided by the vendor), and the actual arrival date of the seal or part.

(H) Date of planned shutdowns that occur while there are any seals or parts that have been placed on delay of repair.

(4) For each reciprocating compressor designated facility, you must maintain the records in paragraphs (c)(4)(i) through (x) and (c)(7) through (12) of this section, as applicable. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraph (c)(7) of this section, you must provide the information specified in § 60.5424c.

(i) For each reciprocating compressor designated facility, you must maintain records of deviations in cases where the reciprocating compressor was not operated in compliance with the requirements specified in § 60.5393c, including a description of each deviation, the date and time each deviation began and the duration of each deviation in hours.

(ii) Records of the date of installation of a rod packing emissions collection system and closed vent system as specified in § 60.5393c(d), where applicable.

(iii) Records of the cumulative number of hours of operation since initial startup, since 36 months after the state plan submittal deadline (as specified in § 60.5362c(c)), or since the previous volumetric flow rate measurement, as applicable. Alternatively, a record that emissions from the rod packing are being routed to a process through a closed vent system.

(iv) A description of the method used and the results of the volumetric flow rate measurement or emissions screening, as applicable.

(v) Records for all flow meters, composition analyzers and pressure gauges used to measure volumetric flow rates as specified in paragraphs (c)(4)(v)(A) through (F) of this section.

(A) Description of standard method published by a consensus-based standards organization or industry standard practice.

(B) Records of volumetric flow rate calculations conducted according to paragraphs § 60.5393c(b) or (c), as applicable.

(C) Records of manufacturer's operating procedures and measurement methods.

(D) Records of manufacturer's recommended procedures or an appropriate industry consensus standard method for calibration and results of calibration, recalibration and accuracy checks.

(E) Records which demonstrate that measurements at the remote location(s) can, when appropriate correction factors are applied, reliably and accurately represent the actual temperature or total pressure at the flow meter under all expected ambient conditions. You must include the date of the demonstration, the data from the demonstration, the mathematical correlation(s) between the remote readings and actual flow meter conditions derived from the data, and any supporting engineering calculations. If adjustments were made to the mathematical relationships, a record and description of such adjustments.

(F) Record of each initial calibration or a recalibration which failed to meet the required accuracy specification and the date of the successful recalibration.

(vi) Date when performance-based volumetric flow rate is exceeded.

(vii) The date of successful replacement or repair of reciprocating compressor rod packing, including follow-up performance-based volumetric flow rate measurement to confirm successful repair.

(viii) Identification of each reciprocating compressor placed on delay of repair because of rod packing or part unavailability and explanation for each delay of repair.

(ix) For each reciprocating compressor that is placed on delay of repair because of replacement rod packing or part unavailability, the operator must document: the date the rod packing or part was added to the delay of repair list, the date the replacement rod packing or part was ordered, the anticipated rod packing or part delivery date (including any estimated shipment or delivery date provided by the vendor), and the actual arrival date of the rod packing or part.

(x) Date of planned shutdowns that occur while there are any reciprocating compressors that have been placed on delay of repair due to the unavailability of rod packing or parts to conduct repairs.

(5) For each process controller designated facility, you must maintain the records specified in paragraphs (c)(5)(i) through (vii) of this section.

(i) Records identifying each process controller that is driven by natural gas and that does not function as an emergency shutdown device.

(ii) For each process controller designated facility complying with § 60.5394c(a), you must maintain records of the information specified in paragraphs (c)(5)(ii)(A) and (B) of this section, as applicable.

(A) If you are complying with § 60.5394c(a) by routing process controller vapors to a process through a closed vent system, you must report the information specified in paragraphs (c)(5)(ii)(A)(*1*) and (*2*) of this section.

(*1*) An identification of all the natural gas-driven process controllers in the process controller designated facility for which you collect and route vapors to a process through a closed vent system.

(*2*) The records specified in paragraphs (c)(7), (9), and (11) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraph (c)(7) of this section, you must provide the information specified in § 60.5424c.

(B) If you are complying with § 60.5394c(a) by using a self-contained natural gas-driven process controller, you must report the information specified in paragraphs (c)(5)(ii)(B)(*1*) through (*3*) of this section.

(*1*) An identification of each process controller complying with § 60.5394c(a) by using a self-contained natural gas-driven process controller;

(*2*) Dates of each inspection required under § 60.5416c(b); and

(*3*) Each defect or leak identified during each natural gas-driven-self-contained process controller system inspection, and date of repair or date of anticipated repair if repair is delayed.

(iii) For each process controller designated facility complying with § 60.5394c(b)(1) process controller bleed rate requirements, you must maintain records of the information specified in paragraphs (c)(5)(iii)(A) and (B) of this section.

(A) The identification of process controllers designed and operated to achieve a bleed rate less than or equal to 6 scfh and records of the manufacturer's specifications indicating that the process controller is designed with a natural gas bleed rate of less than or equal to 6 scfh.

(B) Where necessary to meet a functional need, the identification of the process controller and demonstration of why it is necessary to use a process controller with a natural gas bleed rate greater than 6 scfh.

(iv) For each intermittent vent process controller in the designated facility complying with the requirements in § 60.5394c(b)(2), you must keep records of the information specified in paragraphs (c)(5)(iv)(A) through (C) of this section.

(A) The identification of each intermittent vent process controller.

(B) Dates and results of the intermittent vent process controller monitoring required by § 60.5394c(b)(2)(ii).

(C) For each instance in which monitoring identifies emissions to the atmosphere from an intermittent vent controller during idle periods, the date of repair or replacement, or the date of anticipated repair or replacement if the repair or replacement is delayed and the date and results of the re-survey after repair or replacement.

(v) For each process controller designated facility complying with § 60.5394c(b)(3), you must maintain the records specified in paragraphs (c)(5)(v)(A) and (B) of this section.

(A) An identification of each process controller for which emissions are routed to a control device.

(B) Records specified in paragraphs (c)(7) and (9) through (12) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (c)(7) of this section, you must provide the information specified in § 60.5424c.

(vi) Records of each change in compliance method, including identification of each natural gas-driven process controller which changes its method of compliance, the new method of compliance, and the date of the change in compliance method.

(vii) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(6) For each storage vessel designated facility, you must maintain the records identified in paragraphs (c)(6)(i) through (vii) of this section.

(i) You must maintain records of the identification and location in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983 of each storage vessel designated facility.

(ii) Records of each methane emissions determination for each storage vessel designated facility made under § 60.5386c(e) including identification of the model or calculation methodology used to calculate the methane emission rate.

(iii) For each instance where the storage vessel was not operated in compliance with the requirements specified in § 60.5396c, a description of the deviation, the date and time each deviation began, and the duration of the deviation.

(iv) If complying with the emissions reduction standard in § 60.5396c(a)(1), you must maintain the records in paragraphs (c)(6)(iv)(A) through (E) of this section.

(A) If you comply with the emission reduction standard with a control device, the information for each control device in paragraph (c)(10) of this section.

(B) Records of the closed vent system inspection as specified paragraph (c)(7) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraph (c)(7) of this section, you must provide the information specified in § 60.5424c.

(C) Records of the cover inspections as specified in paragraph (c)(8) of this section. If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraph (c)(8) of this section, you must provide the information specified in § 60.5424c.

(D) If applicable, the records of bypass monitoring as specified in paragraph (c)(9) of this section.

(E) Records of the closed vent system assessment as specified in paragraph (c)(11) of this section.

(v) For storage vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges, or ships), records indicating the number of consecutive days that the vessel is located at a site in the crude oil and natural gas source category. If a storage vessel is removed from a site and, within 30 days, is either returned to the site or replaced by another storage vessel at the site to serve the same or similar function, then the entire period since the original storage vessel was first located at the site, including the days when the storage vessel was removed, will be added to the count towards the number of consecutive days.

(vi) Records of the date that each storage vessel designated facility or portion of a storage vessel designated facility is removed from service and returned to service, as applicable.

(vii) Records of the date that liquids from the well following fracturing or refracturing are routed to the storage vessel designated facility; or the date that you comply with paragraph § 60.5396c(a)(2), following a monthly emissions determination which

indicates that methane emissions increase to 14 tpy or greater and the increase is not associated with fracturing or refracturing of a well feeding the storage vessel designated facility, and records of the methane emissions rate and the model or calculation methodology used to calculate the methane emission rate.

(7) Records of each closed vent system inspection required under § 60.5416c(a)(1) and (2) and (b) for your well, centrifugal compressor, reciprocating compressor, process controller, pump, storage vessel, and process unit equipment designated facility as required in paragraphs (c)(7)(i) through (iv) of this section.

(i) A record of each closed vent system inspection or no identifiable emissions monitoring survey. You must include an identification number for each closed vent system (or other unique identification description selected by you), the date of the inspection, and the method used to conduct the inspection (*i.e.,* visual, AVO, OGI, Method 21 of appendix A–7 to this part).

(ii) For each defect or emissions detected during inspections required by § 60.5416c(a)(1) and (2), or (b) you must record the location of the defect or emissions; a description of the defect; the maximum concentration reading obtained if using Method 21 of appendix A–7 to this part; the indication of emissions detected by AVO if using AVO; the date of detection; the date of each attempt to repair the emissions or defect; the corrective action taken during each attempt to repair the defect; and the date the repair to correct the defect or emissions is completed.

(iii) If repair of the defect is delayed as described in § 60.5416c(b)(6), you must record the reason for the delay and the date you expect to complete the repair.

(iv) Parts of the closed vent system designated as unsafe to inspect as described in § 60.5416c(b)(7) or difficult to inspect as described in § 60.5416c(b)(8), the reason for the designation, and written plan for inspection of that part of the closed vent system.

(8) A record of each cover inspection required under § 60.5416c(a)(3) for your centrifugal compressor, reciprocating compressor, or storage vessel as required in paragraphs (c)(8)(i) through (iv) of this section.

(i) A record of each cover inspection. You must include an identification number for each cover (or other unique identification description selected by you), the date of the inspection, and the method used to conduct the inspection (*i.e.,* AVO, OGI, Method 21 of appendix A–7 to this part).

(ii) For each defect detected during the inspection you must record the location of the defect; a description of the defect; the date of detection; the maximum concentration reading obtained if using Method 21 of appendix A–7 to this part; the indication of emissions detected by AVO if using AVO; the date of each attempt to repair the defect; the corrective action taken during each attempt to repair the defect; and the date the repair to correct the defect is completed.

(iii) If repair of the defect is delayed as described in § 60.5416c(b)(5), you must record the reason for the delay and the date you expect to complete the repair.

(iv) Parts of the cover designated as unsafe to inspect as described in § 60.5416c(b)(7) or difficult to inspect as described in § 60.5416c(b)(8), the reason for the designation, and written plan for inspection of that part of the cover.

(9) For each bypass subject to the bypass requirements of § 60.5416c(a)(4), you must maintain a record of the following, as applicable: readings from the flow indicator; each inspection of the seal or closure mechanism; the date and time of each instance the key is checked out; date and time of each instance the alarm is sounded.

(10) Records for each control device used to comply with the emission reduction standard in § 60.5391c(b) for associated gas wells, § 60.5392c(a)(4) for centrifugal compressor designated facilities, § 60.5393c(d)(2) for reciprocating compressor designated facilities, § 60.5394c(b)(3) for your process controller designated facility in Alaska, § 60.5395c(b)(3) for your pump designated facility, § 60.5396c(a)(2) for your storage vessel designated facility, § 60.5390c(g) for well designated facility gas well liquids unloading, or § 60.5400c(f) or 60.5401c(e) for your process equipment designated facility, as required in paragraphs (c)(10)(i) through (viii) of this section. If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d), keep records of the information in paragraphs (c)(10)(ix) of this section, in lieu of the records required by paragraphs (c)(10)(i) through (iv) and (vi) through (viii) of this section.

(i) For a control device tested under § 60.5413c(d) which meets the criteria in § 60.5413c(d)(11) and (e), keep records of the information in paragraphs (c)(10)(i)(A) through (E) of this section, in addition to the records in paragraphs (c)(10)(ii) through (ix) of this section, as applicable.

(A) Serial number of purchased device and copy of purchase order.

(B) Location of the designated facility associated with the control device in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(C) Minimum and maximum inlet gas flow rate specified by the manufacturer.

(D) Records of the maintenance and repair log as specified in § 60.5413c(e)(4), for all inspection, repair, and maintenance activities for each control device failing the visible emissions test.

(E) Records of the manufacturer's written operating instructions, procedures, and maintenance schedule to ensure good air pollution control practices for minimizing emissions.

(ii) For all control devices, keep records of the information in paragraphs (c)(10)(ii)(A) through (G) of this section, as applicable.

(A) Make, model, and date of installation of the control device, and identification of the designated facility controlled by the device.

(B) Records of deviations in accordance with § 60.5417c(g)(1) through (7), including a description of the deviation, the date and time the deviation began, the duration of the deviation, and the cause of the deviation.

(C) The monitoring plan required by § 60.5417c(c)(2).

(D) Make and model number of each continuous parameter monitoring system.

(E) Records of minimum and maximum operating parameter values, continuous parameter monitoring system data (including records that the pilot or combustion flame is present at all times), calculated averages of continuous parameter monitoring system data, and results of all compliance calculations.

(F) Records of continuous parameter monitoring system equipment performance checks, system accuracy audits, performance evaluations, or other audit procedures and results of all inspections specified in the monitoring plan in accordance with § 60.5417c(c)(2). Records of calibration gas cylinders, if applicable.

(G) Periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions and required monitoring system quality assurance or quality control activities Records of repairs on the monitoring system.

(iii) For each carbon adsorption system, records of the schedule for carbon replacement as determined by the design analysis requirements of § 60.5413c(c)(2) and (3) and records of each carbon replacement as specified in § 60.5412c(c)(1) and § 60.5415c(e)(1)(viii).

(iv) For enclosed combustion devices and flares, records of visible emissions observations as specified in paragraph (c)(10)(iv)(A) or (B) of this section.

(A) Records of observations with Method 22 of appendix A–7 to this part, including observations required following return to operation from a maintenance or repair activity, which include: company, location, company representative (name of the person performing the observation), sky conditions, process unit (type of control device), clock start time, observation period duration (in minutes and seconds), accumulated emission time (in minutes and seconds), and clock end time. You may create your own form including the above information or use Figure 22–1 in Method 22 of appendix A–7 to this part.

(B) If you monitor visible emissions with a video surveillance camera, location of the camera and distance to emission source, records of the video surveillance output, and documentation that an operator looked at the feed daily, including the date and start time of observation, the length of observation, and length of time visible emissions were present.

(v) For enclosed combustion devices and flares, video of the OGI inspection conducted in accordance with § 60.5415c(e)(1)(x). Records documenting each enclosed combustion device and flare was visibly observed during each inspection conducted under § 60.5397c using AVO in accordance with § 60.5415c(e)(1)(x).

(vi) For enclosed combustion devices and flares, records of each demonstration of the NHV of the inlet gas to the enclosed combustion device or flare conducted in accordance with § 60.5417c(d)(8)(iii). For each re-evaluation of the NHV of the inlet gas, records of process changes and explanation of the conditions that led to the need to re-evaluation the NHV of the inlet gas. For each demonstration, record information on whether the enclosed combustion device or flare has the potential to receive inert gases, and if so, the highest percentage of inert gases that can be sent to the enclosed combustion device or flare and the highest percent of inert gases sent to the enclosed combustion device or flare during the NHV demonstration. Records of periodic sampling conducted under § 60.5417c(d)(8)(iii)(G).

(vii) For enclosed combustion devices and flares, if you use a backpressure regulator valve, the make and model of the valve, date of installation, and record of inlet flow rating. Maintain records of the engineering evaluation and manufacturer specifications that identify the pressure set point corresponding to the minimum inlet gas flow rate, the annual confirmation that the backpressure regulator valve set point is correct and consistent with the engineering evaluation and manufacturer specifications, and the annual confirmation that the backpressure regulator valve fully closes when not in open position.

(viii) For enclosed combustion devices and flares, records of each demonstration required under § 60.5417c(d)(8)(iv).

(ix) If you use an enclosed combustion device or flare using an alternative test method approved under § 60.5412c(d), keep records of the information in paragraphs (c)(10)(ix)(A) through (H) of this section, in lieu of the records required by paragraphs (c)(10)(i) through (iv) and (vi) through (viii) of this section.

(A) An identification of the alternative test method used.

(B) Data recorded at the intervals required by the alternative test method.

(C) Monitoring plan required by § 60.5417c(i)(2).

(D) Quality assurance and quality control activities conducted in accordance with the alternative test method.

(E) If required by § 60.5412c(d)(4) to conduct visible emissions observations, records required by paragraph (c)(10)(iv) of this section.

(F) If required by § 60.5412c(d)(5) to conduct pilot or combustion flame monitoring, record indicating the presence of a pilot or combustion flame and periods when the pilot or combustion flame is absent.

(G) For each instance where there is a deviation of the control device in accordance with § 60.5417c(i)(6)(i) through (v), the date and time the deviation began, the duration of the deviation in hours, and cause of the deviation.

(H) Any additional information required to be recorded as specified by the Administrator as part of the alternative test method approval under § 60.5412c(d).

(11) For each closed vent system routing to a control device or process, the records of the assessment conducted according to § 60.5411c(c):

(i) A copy of the assessment conducted according to § 60.5411c(c)(1); and

(ii) A copy of the certification according to § 60.5411c(c)(1)(i) and (ii).

(12) A copy of each performance test submitted under paragraphs (b)(11) or (12) of this section.

(13) For the fugitive emissions components designated facility, maintain the records identified in paragraphs (c)(13)(i) through (vii) of this section.

(i) The date of the startup of production or the date of the first day of production after modification for the fugitive emissions components designated facility at a well site and the date of startup or the date of modification for the fugitive emissions components designated facility at a compressor station.

(ii) For the fugitive emissions components designated facility at a well site, you must maintain records specifying what type of well site it is (*i.e.,* single wellhead only well site, small wellsite, multi-wellhead only well site, or a well site with major production and processing equipment.)

(iii) For the fugitive emissions components designated facility at a well site where you complete the removal of all major production and processing equipment such that the well site contains only one or more wellheads, record the date the well site completes the removal of all major production and processing equipment from the well site, and, if the well site is still producing, record the well ID or separate tank battery ID receiving the production from the well site. If major production and processing equipment is subsequently added back to the well site, record the date that the first piece of major production and processing equipment is added back to the well site.

(iv) The fugitive emissions monitoring plan as required in § 60.5397c(b), (c), and (d).

(v) The records of each monitoring survey as specified in paragraphs (c)(13)(v)(A) through (I) of this section.

(A) Date of the survey.

(B) Beginning and end time of the survey.

(C) Name of operator(s), training, and experience of the operator(s) performing the survey.

(D) Monitoring instrument or method used.

(E) Fugitive emissions component identification when Method 21 of appendix A–7 to this part is used to perform the monitoring survey.

(F) Ambient temperature, sky conditions, and maximum wind speed

at the time of the survey. For compressor stations, operating mode of each compressor (*i.e.,* operating, standby pressurized, and not operating-depressurized modes) at the station at the time of the survey.

(G) Any deviations from the monitoring plan or a statement that there were no deviations from the monitoring plan.

(H) Records of calibrations for the instrument used during the monitoring survey.

(I) Documentation of each fugitive emission detected during the monitoring survey, including the information specified in paragraphs (c)(13)(v)(I)(*1*) through (*9*) of this section.

(*1*) Location of each fugitive emission identified.

(*2*) Type of fugitive emissions component, including designation as difficult-to-monitor or unsafe-to-monitor, if applicable.

(*3*) If Method 21 of appendix A–7 to this part is used for detection, record the component ID and instrument reading.

(*4*) For each repair that cannot be made during the monitoring survey when the fugitive emissions are initially found, a digital photograph or video must be taken of that component or the component must be tagged for identification purposes. The digital photograph must include the date that the photograph was taken and must clearly identify the component by location within the site (*e.g.,* the latitude and longitude of the component or by other descriptive landmarks visible in the picture). The digital photograph or identification (*e.g.,* tag) may be removed after the repair is completed, including verification of repair with the resurvey.

(*5*) The date of first attempt at repair of the fugitive emissions component(s).

(*6*) The date of successful repair of the fugitive emissions component, including the resurvey to verify repair and instrument used for the resurvey.

(*7*) Identification of each fugitive emission component placed on delay of repair and explanation for each delay of repair.

(*8*) For each fugitive emission component placed on delay of repair for reason of replacement component unavailability, the operator must document: the date the component was added to the delay of repair list, the date the replacement fugitive component or part thereof was ordered, the anticipated component delivery date (including any estimated shipment or delivery date provided by the vendor), and the actual arrival date of the component.

(*9*) Date of planned shutdowns that occur while there are any components that have been placed on delay of repair.

(vi) For well closure activities, you must maintain the information specified in paragraphs (c)(13)(vi)(A) through (G) of this section.

(A) The well closure plan developed in accordance with § 60.5397c(l) and the date the plan was submitted.

(B) The notification of the intent to close the well site and the date the notification was submitted.

(C) The date of the cessation of production from all wells at the well site.

(D) The date you began well closure activities at the well site.

(E) Each status report for the well closure activities reported in paragraph (b)(8)(iv)(A) of this section.

(F) Each OGI survey reported in paragraph (b)(8)(iv)(B) of this section including the date, the monitoring instrument used, and the results of the survey or resurvey.

(G) The final OGI survey video demonstrating the closure of all wells at the site. The video must include the date that the video was taken and must identify the well site location by latitude and longitude.

(vii) If you comply with an alternative GHG standard under § 60.5398c, in lieu of the information specified in paragraphs (c)(13)(iv) and (v) of this section, you must maintain the records specified in § 60.5424c.

(14) For each pump designated facility, you must maintain the records identified in paragraphs (c)(14)(i) through (ix) of this section, as applicable.

(i) Identification of each pump that is driven by natural gas and that is in operation 90 days or more per calendar year.

(ii) If you are complying with § 60.5395c(a) or (b)(1) by routing pump vapors to a process through a closed vent system, identification of all the natural gas-driven pumps in the pump designated facility for which you collect and route vapors to a process through a closed vent system and the records specified in paragraphs (c)(7), (9), and (11) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398c, in lieu of the information specified in paragraph (c)(7) of this section, you must provide the information specified in § 60.5424c.

(iii) If you are complying with § 60.5395c(b)(1) by routing pump vapors to control device achieving a 95.0 percent reduction in methane emissions, you must keep the records specified in paragraphs (c)(7) and (c)(9) through (c)(12) of this section. If you comply with an alternative GHG and VOC standard under § 60.5398c, in lieu of the information specified in paragraph (c)(7) of this section, you must provide the information specified in § 60.5424c.

(iv) If you are complying with § 60.5395c(b)(3) by routing pump vapors to a control device achieving less than a 95.0 percent reduction in methane emissions, you must maintain records of the certification that there is a control device on site but it does not achieve a 95.0 percent emissions reduction and a record of the design evaluation or manufacturer's specifications which indicate the percentage reduction the control device is designed to achieve.

(v) If you have less than three natural gas-driven diaphragm pumps in the pump designated facility, and you do not have a vapor recovery unit or control device installed on site by the compliance date, you must retain a record of your certification required under § 60.5395c(b)(4), certifying that there is no vapor recovery unit or control device on site. If you subsequently install a control device or vapor recovery unit, you must maintain the records required under paragraphs (c)(14)(ii) and (iii) or (iv) of this section, as applicable.

(vi) If you determine, through an engineering assessment, that it is technically infeasible to route the pump designated facility emissions to a process or control device, you must retain records of your demonstration and certification that it is technically infeasible as required under § 60.5395c(b)(7).

(vii) If the pump is routed to a process or control device that is subsequently removed from the location or is no longer available such that there is no option to route to a process or control device, you are required to retain records of this change and the records required under paragraph (c)(14)(vi) of this section.

(viii) Records of each change in compliance method, including identification of each natural gas-driven pump which changes its method of compliance, the new method of compliance, and the date of the change in compliance method.

(ix) Records of each deviation, the date and time the deviation began, the duration of the deviation, and a description of the deviation.

(d) *Electronic reporting.* If you are required to submit notifications or reports following the procedure specified in this paragraph (d), you must submit notifications or reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data

Exchange (CDX) (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report or notification, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (d)(1) and (2) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (d).

* * * * *

■ 63. Amend § 60.5421c by revising the introductory text and paragraph (b) introductory text to read as follows:

§ 60.5421c What are my additional recordkeeping requirements for process unit equipment designated facilities?

You must maintain a record of each equipment leak monitoring inspection and each leak identified under § 60.5400c and § 60.5401c as specified in paragraphs (b)(1) through (17) of this section. The record must be maintained either onsite or at the nearest local field office for at least 5 years. Any records required to be maintained that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

* * * * *

(b) You must maintain the monitoring inspection records specified in paragraphs (b)(1) through (17) of this section.

* * * * *

■ 64. Amend § 60.5424c by revising paragraph (e)(6) to read as follows:

§ 60.5424c What are my additional recordkeeping and reporting requirements if I comply with the alternative GHG standards for fugitive emissions components designated facilities and covers and closed vent systems?

* * * * *

(e) * * *

(6) Each rolling 12-month average operational downtime for the system, calculated in accordance with § 60.5398c(c)(1)(iv)(D).

* * * * *

■ 65. Amend § 60.5430c by revising the definitions of *Initial calibration value, No identifiable emissions, Repaired,* and *Storage vessel* to read as follows:

§ 60.5430c What definitions apply to this subpart?

* * * * *

Initial calibration value, as used in the standards and requirements of this subpart relative to the process unit equipment designated facility at onshore natural gas processing plants, means the concentration measured during the initial calibration at the beginning of each day required in § 60.5406c, or the most recent calibration if the instrument is recalibrated during the day (*i.e.,* the calibration is adjusted) after a calibration drift assessment.

* * * * *

No identifiable emissions means, for the purposes of covers, closed vent systems, and self-contained natural gas-driven process controllers and as determined according to the provisions of § 60.5416c, 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 Method 21 of appendix A–7 to this part when inspections are conducted with Method 21.

* * * * *

Repaired means the following:

(1) For the purposes of fugitive emissions components designated facilities, that fugitive emissions components are adjusted, replaced, or otherwise altered, in order to eliminate fugitive emissions as defined in § 60.5397c and resurveyed as specified in § 60.5397c(h)(4) and it is verified that emissions from the fugitive emissions components are below the applicable fugitive emissions definition.

(2) For the purposes of process unit equipment designated facilities, that equipment is adjusted, or otherwise altered, in order to eliminate a leak as defined in §§ 60.5400c and 60.5401c and is re-monitored as specified in § 60.5400c(b) introductory text or § 60.5406c, respectively, to verify that emissions from the equipment are below the applicable leak definition. Pumps in light liquid service subject to § 60.5400c(c)(2) or § 60.5401c(b)(1)(ii) are not subject to re-monitoring.

* * * * *

Storage vessel means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. A well completion vessel that receives recovered liquids from a well after startup of production following flowback for a period which exceeds 60 days is considered a storage vessel under this subpart. A tank or other vessel shall not be considered a storage vessel if it has been removed from service in accordance with the requirements of § 60.5396c(c)(1) until such time as such tank or other vessel has been returned to service. For the purposes of this subpart, the following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420c(c)(6)(v), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel from the date the original vessel was first located at the site. This exclusion does not apply to a well completion vessel as described above.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

* * * * *

■ 66. Revise table 1 to subpart OOOOc of part 60 to read as follows:

TABLE 1 TO SUBPART OOOOc OF PART 60—DESIGNATED FACILITY PRESUMPTIVE STANDARDS AND REGULATED ENTITY COMPLIANCE DATES

Designated facility	Model rule presumptive standards section	Regulated entity compliance dates
Wells	a. Gas wells liquids unloading events—§ 60.5390c. b. Associated gas wells—§ 60.5391c	36 months after the state plan submittal deadline specified in § 60.5362c(c).
Centrifugal Compressors	§ 60.5392c.	
Reciprocating Compressors	§ 60.5393c.	
Process Controllers	§ 60.5394c.	
Pumps	§ 60.5395c.	
Storage Vessels	§ 60.5396c.	
Fugitive Emissions Components	a. Primary standards—§ 60.5397c b. Alternative standards for fugitive emissions components and covers and closed vent systems—§ 60.5398c.	
Super Emitter Events	§ 60.5388c.	
Process Unit Equipment	a. Onshore natural gas processing plants—§ 60.5400c. b. Process unit equipment alternative standards—§ 60.5401c. c. Process unit equipment requirement exceptions—§ 60.5402c.	

■ 67. Amend table 4 to subpart OOOOc of part 60 by revising the entry for ''§ 60.8'' to read as follows:

TABLE 4 TO SUBPART OOOOc OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOOc

General provisions citation	Subject of citation	Applies to subpart?	Explanation
*	*	*	*
§ 60.8	Performance tests	Yes	Except that the format and submittal of performance test reports is described in § 60.5420c(b) and (d). Performance testing is required for control devices used on wells, storage vessels, centrifugal compressors, reciprocating compressors, process controllers, and pumps, as applicable, except that performance testing is not required for a control device used solely on pump(s).
*	*	*	*

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Part III

National Labor Relations Board

29 CFR Part 103

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships; Final Rule

NATIONAL LABOR RELATIONS BOARD

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RIN 3142–AA22

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: As part of its ongoing efforts to more effectively administer the National Labor Relations Act (the Act or the NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) hereby rescinds and replaces the amendments the Board made in April 2020 to its rules and regulations governing the filing and processing of petitions for a Board-conducted representation election while unfair labor practice charges are pending and following an employer's voluntary recognition of a union as the majority-supported collective-bargaining representative of the employer's employees. The Board also rescinds an amendment governing the filing and processing of petitions for a Board-conducted representation election in the construction industry. The Board believes that the amendments made in this final rule better protect employees' statutory right to freely choose whether to be represented by a labor organization, promote industrial peace, and encourage the practice and procedure of collective bargaining.

DATES: This rule is effective September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–2917 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Introduction & Overview of the Rulemaking

As set forth more fully below, on April 1, 2020, the Board made various amendments to its rules and regulations governing blocking charges, the voluntary-recognition bar doctrine, and proof of majority support for labor organizations representing employees in the construction industry. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,* 85 FR 18366 (April 1, 2020) (''the April 2020 rule'').

First, the April 2020 rule substantially eliminated the Board's long-established blocking charge policy, under which regional directors had authority to delay processing election petitions in the face of pending unfair labor practice charges alleging conduct that would interfere with employee free choice in an election or conduct that is inherently inconsistent with the election petition itself. Under the April 2020 rule, regional directors generally were required for the first time since the Act was declared constitutional to conduct an election even when an unfair labor practice charge and blocking request had been filed. 85 FR 18370, 18375. Moreover, under the April 2020 rule, regional directors generally were further required to immediately open and count the ballots, except in a limited subset of cases where the ballots would be impounded for a maximum of 60 days (unless a complaint issues within 60 days of the election). 85 FR 18369–18370, 18376.[1]

Second, the April 2020 rule made changes to the voluntary-recognition bar doctrine, which encourages collective bargaining and promotes industrial stability by allowing a union—after being voluntarily and lawfully recognized by an employer—to represent employees for a certain period of time without being subject to challenge. The April 2020 rule abandoned *Lamons Gasket Co.,* 357 NLRB 934 (2011), and returned to the approach taken previously by the Board in *Dana Corp.,* 351 NLRB 434 (2007). Under the April 2020 rule, neither an employer's voluntary recognition of a union, nor the first collective-bargaining agreement executed by the parties after recognition, bars the processing of an election petition, unless: (1) the employer or the union notifies the Board's Regional Office that recognition has been granted; (2) the employer posts a notice ''informing employees that recognition has been granted and that they have a right to file a petition during a 45-day 'window period' beginning on the date the notice is posted''; (3) the employer distributes the notice electronically to employees, if electronic communication is customary; and (4) 45 days from the posting date pass without a properly supported election petition being filed. 85 FR 18370.

Third, the April 2020 rule made changes to the *Staunton Fuel & Material,* 335 NLRB 717 (2001), doctrine, which defined the minimum requirements for what must be stated in a written recognition agreement or contract clause in order for it to serve as sufficient evidence that a union representing employees in the construction industry has attained 9(a) status, and overruled the Board's decision in *Casale Industries,* 311 NLRB 951 (1993), providing that the Board would not entertain a claim that a union lacked 9(a) status when it was initially granted recognition by a construction employer if more than 6 months had elapsed. 85 FR 18369–18370, 18391.[2]

The April 2020 rule became effective on July 31, 2020. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,* 85 FR 20156 (April 10, 2020) (delaying effective date from June 1, 2020 to July 31, 2020).

On November 4, 2022, the Board issued a Notice of Proposed Rulemaking proposing to rescind and replace the three amendments to its rules and regulations made by the April 2020 rule. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,* 87 FR 66890 (November 4, 2022). The Board set an initial comment period of 60 days, with 14 additional days allotted for reply comments. 87 FR 66890. Thereafter the Board extended these deadlines by thirty days. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,* 87 FR 73705 (December 1, 2022). The comments are summarized and addressed in detail below.

The effect of the instant final rule, which adopts the NPRM proposals with several modifications, discussed below, is to return the law in each of those areas to that which existed prior to the adoption of the April 2020 rule, including by rescinding and replacing the portions of the final rule that addressed the blocking charge policy and voluntary-recognition bar doctrine and rescinding the portion of the final rule that addressed proof of majority support for labor organizations representing employees in the construction industry. More

[1] However, as discussed more fully below, the April 2020 rule did not disturb the authority of regional directors to dismiss a representation petition, subject to reinstatement, under the Board's long-standing practice of ''merit-determination dismissals.'' See *Rieth-Riley Construction Co., Inc.,* 371 NLRB No. 109 (2022).

[2] Sec. 8(f) of the Act uses the term ''engaged primarily in the building and construction industry.'' 29 U.S.C. 158(f). Throughout this rule, for convenience, and without any intent to define or alter the accepted scope of the term, we use the shorthand ''construction industry'' and ''construction employer.''

specifically, under the instant rule, regional directors once again have authority to delay an election when a party to the representation proceeding requests that its unfair labor practice charge block an election, provided the request is supported by an adequate offer of proof, the party agrees to promptly make its witnesses available, and no exception is applicable. The final rule restores the Board's prior applicable law regarding the blocking charge policy. For the sake of clarity, the final rule codifies the basic contours of the historical blocking charge policy, as well as the pre-April 2020 requirements contained in 29 CFR 103.20 in full.[3] The final rule rescinds current Section 103.21 and codifies the traditional voluntary-recognition bar, as refined in *Lamons Gasket* to define the reasonable period for collective bargaining that sets the duration of the bar. Lastly, the final rule rescinds current Section 103.22 in toto and returns to the Board's previously effective caselaw precedent, such as *Staunton Fuel* and *Casale Industries,* governing the application of the voluntary recognition bar and contract bar in the construction industry. After carefully considering the comments on the NPRM and the views of the April 2020 Board, we conclude that these changes to the April 2020 final rule will better protect employees' statutory right of free choice on questions concerning representation, further promote industrial stability, and more effectively encourage the practice and procedure of collective bargaining.[4]

[3] Accordingly, the Board expects that the General Counsel will restore the provisions addressing blocking charges contained in the NLRB Casehandling Manual (Part Two), Representation Proceedings to those that existed prior to April 2020 rule.

[4] The Board's intention is that the actions taken in this final rule be treated as separate and severable. In the Board's view, set forth more extensively below, the 2020 rule fails to fully promote the Act's policies. The Board's rescissions of the portions of the 2020 rule that address the blocking charge policy and the voluntary-recognition bar doctrine are intended to be independent of its promulgation of the final rule text addressing these subjects. If all or portions of the final rule text promulgated here were deemed invalid, the Board would nevertheless adhere to its decision to rescind the 2020 rule's provisions addressing the blocking charge policy and the voluntary-recognition bar doctrine. In that event, the Board's view is that the historical blocking charge policy, which was developed through adjudication, would again be applied and developed consistent with the precedent that was extant before the 2020 rule was promulgated, unless and until the policy were revised through adjudication. Likewise, the Board's view is that the voluntary-recognition bar would revert to a caselaw doctrine, reflected in the controlling decision that preceded the 2020 rule, *Lamons Gasket,* supra, 357 NLRB 934, insofar as permissible, subject to change through adjudication.

II. Substantive Background

Section 1 of the Act sets forth Congressional findings that the denial by some employers of the right of employees to organize and bargain collectively leads to industrial strife that adversely affects commerce. Congress has declared it to be the policy of the United States to mitigate or eliminate those adverse effects by ''encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.'' 29 U.S.C. 151. Further, Section 7 of the Act grants employees the right ''to bargain collectively through representatives of their own choosing . . . . '' 29 U.S.C. 157.

As discussed more fully below, federal labor law recognizes that employees may seek representation for the purpose of bargaining collectively with their employer through either a Board election or by demonstrating majority support for representation. See, *e.g., United Mine Workers* v. *Arkansas Oak Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956). Voluntary recognition predates the Act, and an employer's voluntary recognition of a majority union ''remains 'a favored element of national labor policy.' '' *NLRB* v. *Creative Food Design Ltd.,* 852 F.2d 1295, 1299 (D.C. Cir. 1988) (citation omitted). An employer is free to voluntarily recognize a union as the designated majority representative of a unit of its employees without insisting on the union's proving its majority status in an election. And, ''once the employer recognizes the Union . . . the employer is bound by that recognition and may no longer seek an election.'' Id. at 1297 (citations omitted). Nevertheless, when employers, employees, and labor organizations are unable to agree on whether the employer should recognize (or continue to recognize) a labor organization as the representative of a unit of employees for purposes of collective bargaining, Section 9 of the Act gives the Board authority to determine if a ''question of representation'' exists and, if so, to resolve the question by conducting ''an election by secret ballot.'' 29 U.S.C. 159(c).

Because the Act calls for freedom of choice by employees as to whether to obtain, or retain, union representation, the Board has long recognized that ''[i]n election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' *General Shoe Corp.,* 77 NLRB 124, 127 (1948). A Board-conducted election ''can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammeled choice for or against a bargaining representative.'' Id. at 126. Indeed, as the Supreme Court has recognized, it is the ''duty of the Board . . . to establish 'the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.' '' *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 276 (1973) (emphasis added) (citation omitted). By definition, a critical part of protecting employee free choice is ensuring that employees are able to vote in an atmosphere free of coercion, so that the results of the election accurately reflect the employees' true desires concerning representation. *General Shoe Corp.,* 77 NLRB at 126–127.

The Supreme Court has repeatedly recognized that ''Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.'' *NLRB* v. *A.J. Tower Co.,* 329 U.S. 324, 330 (1946). ''The control of the election proceedings, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.'' *NLRB* v. *Waterman Steamship Corp.,* 309 U.S. 206, 226 (1940); see also *Southern S.S. Co.* v. *NLRB,* 316 U.S. 31, 37 (1942).

Although the Act itself contains only one express limitation on the timing of elections,[5] the Board has instituted through adjudication several policies that affect the timing of elections in an effort to further other core goals of the Act. For example, the Board, with court approval, precludes electoral challenges to an incumbent union bargaining representative for the first 3 years of a collective-bargaining agreement (the

[5] Sec. 9(c)(3) provides that ''[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.'' 29 U.S.C. 159(c)(3).

Election petitions filed by labor organizations seeking certification as the collective-bargaining representative of employees are classified as RC petitions. Decertification election petitions filed by an individual employee seeking to oust an incumbent collective-bargaining representative are classified as RD petitions. Petitions for elections filed by employers are classified as RM petitions. Petitions to deauthorize union-security provisions are classified as UD petitions.

contract bar) in the interests of stabilizing existing bargaining relationships, notwithstanding that it delays employees' ability to choose not to be represented or to select a different representative. See *General Cable Corp.,* 139 NLRB 1123, 1125 (1962); see also *Terrace Gardens Plaza, Inc.* v. *NLRB,* 91 F.3d 222, 227–228 (D.C. Cir. 1996); *Leedom* v. *IBEW, Local Union No. 108, AFL–CIO,* 278 F.2d 237, 242 (D.C. Cir. 1960) (noting that ''Congress relied on the Board's expertise to harmonize the competing goals of industrial stability and employee freedom of choice to best achieve the ultimate purposes of the Act.'').[6]

The subject of this rulemaking proceeding concerns three other policies that the Board originally created through adjudication to protect employee free choice in elections and to effectuate the Act's policies favoring stable bargaining relationships: the blocking charge policy; the voluntary-recognition bar doctrine; and the policy governing 9(a) recognition in the construction industry. The Board's April 2020 rule radically altered each of those policies, and the instant rule restores the status quo ante.

A. Blocking Charge Policy

1. The Board's Historical Blocking Charge Policy; Its Rationale and Application

As the Board acknowledged in the notice of proposed rulemaking that culminated in the April 2020 rule, the blocking charge policy dates back to the early days of the Act. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,* 84 FR 39930, 39931 (Aug. 12, 2019). See also *United States Coal & Coke Co.,* 3 NLRB 398, 399 (1937). Indeed, prior to the April 2020 rule, and for more than eight decades, the Board had maintained a policy of generally declining to process an election petition over party objections in the face of pending unfair labor practice charges alleging conduct that, if proven, would interfere with employee free choice in an election, until the merits of those charges could be determined.[7]

The rationale for the blocking charge policy was straightforward: it was ''premised solely on the [Board's] intention to protect the free choice of employees in the election process.'' NLRB Casehandling Manual (Part Two), Representation Proceedings Section 11730 (August 2007) (''Casehandling Manual (August 2007)''). ''The Board's policy of holding the petition in abeyance in the face of pending unfair labor practices is designed to preserve the laboratory conditions that the Board requires for all elections and to ensure that a free and fair election can be held in an atmosphere free of any type of coercive behavior.'' *Mark Burnett Productions,* 349 NLRB 706, 706 (2007).

Prior to the effective date of the April 2020 rule, there were two broad categories of blocking charges. The first, called Type I charges, encompassed charges that alleged conduct that merely interferes with employee free choice. Casehandling Manual Section 11730.1 (August 2007). See also NLRB Casehandling Manual (Part Two), Representation Proceedings Section 11730.1 (January 2017) (''Casehandling Manual (January 2017)''). Examples of Type I charges included allegations of employer threats to retaliate against employees if they vote in favor of union representation or promises of benefits if employees vote against union representation. For many years, the blocking charge policy provided that if the charging party in a pending unfair labor practice case was also a party to a representation proceeding, and the charge alleged conduct that, if proven, would interfere with employee free choice in an election (a Type I charge), were one to be conducted, and no exception was applicable, the charge should be investigated and either dismissed or remedied before the petition was processed. Casehandling Manual Section 11730.2 (August 2007).[8]

The policy further provided that if upon completion of the investigation of the charge, the regional director determined that the Type I charge had merit and that a complaint should issue absent settlement, the regional director was to refrain from conducting an election until the charged party took all the remedial action required by the settlement agreement, administrative law judge's decision, Board order, or court judgment. Casehandling Manual Sections 11730.2; 11733, 11734 (August 2007). On the other hand, if upon completion of the investigation of the charge, the regional director determined that the charge lacked merit and should be dismissed absent withdrawal, the regional director was to resume processing the petition and conduct an election where appropriate. Casehandling Manual Sections 11730.2; 11732 (August 2007).

In short, in cases where the Type I charges proved meritorious and there had been conduct that would interfere with employee free choice in an election, the blocking charge policy delayed the election until those unfair labor practices had been remedied. As for the subset of cases where the charges were subsequently found to lack merit, the policy provided for regional directors to resume processing those petitions to elections.

The second broad category of blocking charges, called Type II charges, encompassed charges that alleged conduct that not only interferes with employee free choice, but that is also inherently inconsistent with the petition itself. Casehandling Manual Sections 11730.1, 11730.3 (August 2007). Under the policy, such charges could block a related petition during the investigation of the charges, because a determination of the merit of the charges could also result in the dismissal of the petition. Casehandling Manual Section 11730.3 (August 2007). Examples of Type II charges included allegations that a labor organization's showing of interest was obtained through threats or force, allegations that an employer's

[6] See generally *Auciello Iron Works, Inc.* v. *NLRB,* 517 U.S. 781, 785 (1996) (''The object of the National Labor Relations Act is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employees'').

[7] See generally *The Developing Labor Law* 561–563 (John E. Higgins, Jr., 5th edition 2006); 3d NLRB Ann. Rep. 143 (1938) (''The Board has often provided that an election be held at such time as the Board would thereafter direct in cases where the employer has been found to have engaged in unfair labor practices and the Board has felt that the election should be delayed until there has been sufficient compliance with the Board's order to dissipate the effects of the unfair labor practices and to permit an election uninfluenced by the employer's conduct. Similarly, where charges have been filed alleging that the employer has engaged in unfair labor practices, the Board has frequently postponed the election indefinitely pending the investigation and determination of the charges.''); 13th NLRB Ann. Rep. 34 & fn. 90 (1948) (''Unremedied unfair labor practices constituting coercion of employees are generally regarded by the Board as grounds for vacating an election[.] For this reason, the Board ordinarily declines to conduct an election if unfair labor practice charges are pending or if unfair labor practices previously found by the Board have not yet been remedied[.]'').

Throughout the instant rule, in discussing the blocking charge policy as it existed prior to the April 2020 rule, we often cite to older editions of the Developing Labor Law and to versions of the NLRB Casehandling Manual that were in effect before the enactment of the 2014 rule amending representation case procedures and the subsequent enactment of the April 2020 rule. This reference to sources that have been supplemented since those rules is intentional and intended to demonstrate the manner in which the blocking charge policy was interpreted and applied during the course of its long history before those rules.

[8] As discussed below, under the Board's 2014 rule amending representation case procedures, for a Type I charge to block the processing of a petition required the charging party to both file a request to block accompanied by a sufficient offer of proof and to promptly make its witnesses available. Casehandling Manual Section 11730.2 (January 2017).

representatives were directly involved in the initiation of a decertification petition, and allegations of an employer's refusal to bargain, for which the remedy is an affirmative bargaining order. Casehandling Manual Sections 11730.3(a), (b) (August 2007). For many years, the blocking charge policy provided that regardless of whether the Type II charges were filed by a party to the petition or by a nonparty, and regardless of whether a request to proceed was filed, the charge should be investigated before the petition was processed unless an exception applied. Casehandling Manual Sections 11730.3, 11731, 11731.1(c) (August 2007).

The blocking charge policy further provided that if the regional director determined that the Type II charge had merit, then the regional director could dismiss the petition, subject to a request for reinstatement by the petitioner after final disposition of the unfair labor practice case. A petition was subject to reinstatement if the allegations in the unfair labor practice case which caused the petition to be dismissed were ultimately found to be without merit. Casehandling Manual Section 11733.2. (August 2007).[9] On the other hand, if the director determined that the Type II charge lacked merit, the director was to resume processing the petition and to conduct the election where appropriate. Casehandling Manual Section 11732 (August 2007).

However, the mere filing of an unfair labor practice charge did ''not automatically cause a petition to be held in abeyance'' under the blocking charge policy. Casehandling Manual Sections 11730, 11731 (August 2007). See also Casehandling Manual Sections 11730, 11731 (January 2017); *Veritas Health Services, Inc.* v. *NLRB,* 895 F.3d 69, 88 (D.C. Cir. 2018) (noting that pending unfair labor practice charges do not necessarily preclude processing a representation petition). For example, the Board had long declined to hold a petition in abeyance if the pending unfair labor practice charge did not allege conduct that would interfere with employee free choice in an election. See, *e.g., Holt Bros.,* 146 NLRB 383, 384 (1964) (rejecting party's request that its charge block an election because even if the charge in question were meritorious, it would not interfere with employee free choice in the election). The Board could also decline to block an immediate election despite a party's request that it do so when the surrounding circumstances suggested that the party was using the filing of charges as a tactic to delay an election without cause. See *Columbia Pictures Corp.,* 81 NLRB 1313, 1314–1315 fn. 9 (1949).[10]

2. The Blocking Charge Policy and the Board's December 2014 Rule Amending Representation Case Procedures

After notice and comment, the Board adopted some 25 amendments to its representation-case procedures in a 2014 final rule, that, among other things, was designed to advance the public interests in free and fair elections and in the prompt resolution of questions concerning representation. See *Representation-Case Procedures,* 79 FR 74308, 74308–74310, 74315, 74341, 74345, 74379, 74411 (December 15, 2014) (''the December 2014 rule''). As the Board acknowledged when adopting the April 2020 rule (85 FR at 18376–18377), the Board also made certain modifications to the blocking charge policy as a part of its December 2014 rule revising the Board's representation-case procedures. In particular, in response to allegations that at times incumbent unions may misuse the blocking charge policy by filing meritless charges to delay decertification elections, the Board imposed a requirement that, whenever any party sought to block the processing of an election petition, it must simultaneously file an offer of proof listing the names of witnesses who will testify in support of the charge and a summary of each witness' anticipated testimony and promptly make its witnesses available. 79 FR at 74419; 29 CFR 130.20. The December 2014 rule also provided that if the regional director determined that the party's offer of proof does not describe evidence of conduct that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director would continue to process the petition and conduct the election where appropriate. 79 FR at 74419; 29 CFR 103.20. The Board expressed the view that those amendments would protect employee free choice while helping to remove unnecessary barriers to the expeditious resolution of questions of representation by providing the regional director with the information necessary to assess whether the unfair labor practice charges have sufficient support and involve the kind of violations that warrant blocking an election, or whether the charges are filed simply for purposes of delay. 79 FR at 74419–74420.

Two Board members dissented from the December 2014 rule. With respect to the blocking charge policy, the dissenting Board members did not propose any changes to the blocking charge policy with respect to Type II charges. However, the two dissenting members advocated a 3-year trial period under which the Board would hold elections—and thereafter impound the ballots—notwithstanding the presence of a request to block (supported by an adequate offer of proof) based on a Type I charge. 79 FR at 74456.

The Board majority rejected the dissenters' proposal to conduct elections in all cases involving Type I charges. The December 2014 rule explained that the dissenting Board Members had not identified any compelling reason to abandon a policy continuously applied since 1937. 79 FR at 74418–74420, 74429 (''Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election: It advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'').

The courts upheld the December 2014 rule. See *Associated Builders & Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 229 (5th Cir. 2016) (noting that the Board ''conducted an exhaustive and lengthy review of the issues, evidence, and testimony, responded to contrary arguments, and offered factual and legal support for its final conclusions''); *Chamber of Commerce of the United States of America* v. *NLRB,* 118 F. Supp. 3d 171, 220 (D.D.C. 2015) (''[T]he Board engaged in a comprehensive analysis of a multitude of issues relating to the need for and the propriety of the Final Rule, and it directly addressed the commenters' many concerns[.]''). See also *RadNet Mgmt., Inc.* v. *NLRB,* 992 F.3d 1114, 1123 (D.C. Cir. 2021) (rejecting arbitrary-and-capricious challenge to 2014 final rule).

Accordingly, under the blocking charge policy as it existed prior to the

[9] For either Type I or II charges, parties had the right to request Board review of regional director determinations to hold petitions in abeyance or to dismiss the petitions altogether. See 29 CFR 102.71(b) (2011); Casehandling Manual Sections 11730.7, 11733.2(b) (August 2007).

[10] The Board also directed an immediate election, despite pending charges, in order to hold the election within 12 months of the beginning of an economic strike so as not to disenfranchise economic strikers, *American Metal Products Co.,* 139 NLRB 601, 604–605 (1962), or in order to prevent harm caused to the economy by a strike resulting from an unresolved question of representation, *New York Shipping Assn.,* 107 NLRB 364, 375–376 (1953). The Casehandling Manual set forth other circumstances in which regional directors could decline to block petitions. Casehandling Manual Section 11731 (August 2007).

effective date of the April 2020 rule, a regional director could not block an election based on the request of a party who had filed an unfair labor practice charge if the party had not first (1) submitted an offer of proof describing evidence that, if proven, would interfere with employee free choice in an election were one to be conducted or conduct that would be inherently inconsistent with the petition itself, (2) listed its witnesses who would testify in support of the charge, and (3) agreed to promptly make its witnesses available. Casehandling Manual Section 11730 (January 2017). Even then, the regional director retained discretion to process the petition if an exception to the blocking charge policy applied. Casehandling Manual Sections 11730, 11730.2, 11730.3, 11730.4, 11731, 11731.1–11731.6 (January 2017).

3. The April 2020 Blocking Charge Amendments

In 2019, the Board issued a Notice of Proposed Rulemaking proposing, in relevant part, to substantially change the blocking charge policy. Under the proposed rule, whenever a party filed unfair labor practice charges that would have blocked processing of the petition under the prior doctrine, the Board would instead conduct the election and impound the ballots (absent dismissal of the representation petition, as noted above at fn. 1). See 84 FR 39930, 39937–39938. If the charge had not been resolved prior to the election, the NPRM proposed that the ballots would remain impounded until the Board made a final determination regarding the charge. 84 FR 39937. The NPRM acknowledged that the ballots would ''never be counted'' in cases where the Board made a final determination that the charge had merit and that the conduct warranted either dismissing the petition or holding a new election. 84 FR 39938.

The NPRM that led to the April 2020 final rule offered several justifications for the proposed amendments, including the arguments that the Board's historical blocking charge policy impeded employee free choice by delaying elections and that there is a potential for incumbent unions to abuse the blocking charge policy by deliberately filing nonmeritorious unfair labor practice charges in the hopes of delaying decertification elections. See, *e.g.,* 84 FR 39931–39933, 39937. The majority prepared appendices and cited them in support of its claims. 84 FR 39933 & fns. 13–14, 39937.

Then-Member McFerran dissented from the 2019 NPRM's proposed changes to the blocking charge policy. In her view, the Board majority offered no valid reasons for substantially changing the blocking charge policy that Boards of differing perspectives had adhered to for more than eight decades. 84 FR 39939–39949. Noting that the majority had implicitly conceded that its proposed vote-and-impound procedure would require regional directors to run—and employees, unions, and employers to participate in—elections conducted under coercive conditions that interfere with employee free choice, the dissent argued that the proposed blocking charge amendments would undermine employee rights and the policies of the Act. 84 FR 39940, 39941, 39943, 39945, 39948, 39949. The dissent further argued that because the proposed amendments would require regional directors to run—and employees, unions, and employers to participate in—elections that would not resolve the question of representation, the proposed amendments would impose unnecessary costs on the parties and the Board. 84 FR 39941, 39945, 39948, 39949. The dissent also pointed out inaccuracies in the data relied on by the majority in support of its proposed changes to the blocking charge policy. 84 FR 39946 fn. 71, 39947 fn. 74.

Then-Member McFerran also prepared an appendix analyzing FY 2016-and FY 2017-filed RD, RC, and RM petitions that were blocked pursuant to the blocking charge policy. 84 FR 39943–39944 & fn. 63; available at *https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-7583/member-mcferran-dissent-appendix.pdf.* Then-Member McFerran explained in her dissent that her review of the relevant data for Fiscal Years 2016 and 2017 indicated that ''the overwhelming majority of decertification petitions are never blocked.'' 84 FR 39943–39944 and Dissent Appendix (''Approximately 80 percent of the decertification petitions filed in FY 2016 and FY 2017 were not impacted by the blocking charge policy because only about 20 percent (131 out of 641) of the decertification petitions filed in FY 2016 and FY 2017 were blocked as a result of the policy.''). The dissent further explained that ''[e]ven in the minority of instances when decertification petitions are blocked, most of these petitions are blocked by meritorious charges. Approximately 66% (86 out of 131) of the decertification petitions that were blocked in FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, Section 1.'' 84 FR 39944 & fn. 64 (explaining that in determining whether a petition was blocked by a meritorious charge, the dissent ''applied the Office of the General Counsel's long-standing merit definition contained in OM 02–102, available at *https://www.nlrb.gov/guidance/memos-research/operations-management-memos.* Accordingly, a petition was deemed blocked by a meritorious charge if the petition was blocked by a charge that resulted in a complaint, a pre-complaint Board settlement, a pre-complaint adjusted withdrawal, or a pre-complaint adjusted dismissal. Id. at p. 4.''). The dissent additionally noted that the Board Chairman and General Counsel in office as of the issuance of the NPRM ''used the same merit definition in their Strategic Plan for FY 2019–FY 2022. See, *e.g.,* Strategic Plan p. 5, attached to GC Memorandum 19–02, available at *https://www.nlrb.gov/guidance/memos-research/general-counsel-memos.*'' 84 FR 39944 fn. 64.

Based on her analysis of the relevant data, then-Member McFerran also pointed out that ''the overwhelming majority of RM petitions are never blocked, and that even in the minority of instances when RM petitions are blocked, most of these petitions are blocked by meritorious charges.'' 84 FR 39945 fn. 69 (''Indeed, my review of the relevant data indicates that approximately 82 percent of the RM petitions filed during FY 2016 and FY 2017 were not blocked, leaving only about 18 percent (18 out of 99) of the RM petitions filed during FY 2016 and FY 2017 as blocked under the policy. See Dissent Appendix, [currently] available at *https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-7583/member-mcferran-dissent-appendix.pdf.* And most pointedly, nearly 89 percent (16 out of 18) of the RM petitions blocked during FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, Sec. 1.''). 84 FR 39945 fn. 69.

The dissent also pointed out numerous errors in the majority's appendices, noting for example that the majority had artificially inflated the length of time periods that their cited cases were blocked, apparently by ''inappropriately aggregat[ing] multiple blocking periods for the same case, even when those periods run concurrently [. . . which . . .] has the rather bizarre effect of listing a case such as *Piedmont Gardens, Grand Lake Gardens,* 32–RC–087995, as having been blocked for more than 12 years—an impossibly high estimate considering that the case was less than 7 years old as of December 31, 2018 (with a petition-filing date of August 24, 2012). See Majority Appendix B Tab 4.'' 84 FR 39946 fn. 71. The dissent also pointed out that the majority had artificially inflated the

number of ''blocked petitions pending'' by including in its list cases that had not been blocked due to the blocking charge policy. 84 FR 39946 fn. 71, 39947 fn. 74.

The majority did not correct the errors before issuing the 2019 NPRM. 84 FR 39930–39939 & fn. 15.[11]

As noted, on April 1, 2020, the Board issued a final rule substantially eliminating the blocking charge policy. 85 FR 18366.[12] The April 2020 rule differed from the 2019 NPRM. Unlike the 2019 NPRM, which had proposed a vote-and-impound procedure for all cases involving blocking charges until there was a final determination of the merits of the charge, the April 2020 rule adopted a vote and immediately count the ballots procedure for the vast majority of blocking charge cases (including all cases involving Type I blocking charges and some cases involving Type II blocking charges). 85 FR 18366, 18369–18370, 18374, 18399. The April 2020 rule also provided that notwithstanding a request to block based on a pending charge alleging certain specified types of Type II conduct, the Board will impound the ballots for no more than 60 days (unless a complaint issues on the Type II charge within the 60-day period, in which case the ballots will remain impounded pending a final determination by the Board). 85 FR 18369–18370, 18374, 18399. In short, under the April 2020 rule, a blocking charge request normally does not delay an election, and only rarer still delays the count of the ballots. 85 FR 18370, 18375, 18399. Nevertheless, the April 2020 rule ''clarifie[d] that the certification of results (including, where appropriate, a certification of representative) shall not issue until there is a final disposition of the charge and a determination of its effect, if any, on the election petition.'' 85 FR 18370.

The Board adopted the amendments requiring the Board to refrain from delaying virtually all elections involving blocking charges essentially for the reasons contained in the 2019 NPRM. 85 FR 18375–18380, 18393. As for its decision to abandon the proposed vote-and-impound procedure and to substitute the requirement that ballots be immediately opened and counted in all cases involving Type I charges and a subset of Type II charges, the Board stated that it had concluded that it would be ''preferable for ballots to be counted immediately after the conclusion of the election . . . with regard to most categories of unfair labor practice charges.'' 85 FR 18380. The final rule agreed with a commenter that:

> [I]mpoundment of ballots does not fully ameliorate the problems with the current blocking charge policy because impoundment fails to decrease a union's incentive to delay its decertification by filing meritless blocking charges; makes it more difficult for parties to settle blocking charges, as they would not know the results of the election during their settlement discussions; and further frustrates and confuses employees waiting, possibly for an extended post-election period, to learn the results of the election.

85 FR 18380.

As noted, however, the Board chose to adopt a vote-and-impound-for-60-days-procedure (with impoundment to last longer if a complaint issued within 60 days of the election) for certain types of Type II unfair labor practice charges. The Board stated in this regard:

> At the same time, however, some types of unfair labor practice charges speak to the very legitimacy of the election process in such a way that warrants different treatment—specifically, those that allege violations of Section 8(a)(1) and 8(a)(2) or Section 8(b)(1)(A) of the Act and that challenge the circumstances surrounding the petition or the showing of interest submitted in support of the petition, and those that allege that an employer has dominated a union in violation of Section 8(a)(2) and that seek to disestablish a bargaining relationship. We believe that in cases involving those types of charges, it is more appropriate to impound the ballots than to promptly count them. Nevertheless, in order to avoid a situation where employees are unaware of the election results indefinitely, we believe it is appropriate to set an outer limit on how long ballots will be impounded. Accordingly, the final rule provides that the impoundment will last for only up to 60 days from the conclusion of the election if the charge has not been withdrawn or dismissed prior to the conclusion of the election, in order to give the General Counsel time to make a merit determination regarding the unfair labor practice charge.

85 FR 18380.

As for the errors in the NPRM pointed out by then-Member McFerran in her dissent to the 2019 NPRM and in the Bloomberg law article, supra fn. 11, the Board stated in the final rule:

> We also acknowledge the claims in the dissent to the NPRM and by some commenters that there were errors in some of the data that the NPRM majority cited to support the proposed rule and that these errors led to exaggeration both of the number of cases delayed and the length of delay involved. Even accepting those claims as accurate, the remaining undisputed statistics substantiate the continuing existence of a systemic delay that supports our policy choice to modify the current blocking-charge procedure that does not, and need not, depend on statistical analysis. As the AFL–CIO candidly acknowledges, ''[b]locking elections delays elections. That is undeniably true and requires no 'statistical evidence' to demonstrate.'' We agree. Furthermore, anecdotal evidence of lengthy blocking charge delays in some cases, and judicial expressions of concern about this, remain among the several persuasive reasons supporting a change that will assure the timely conduct of elections without sacrificing protections against election interference.

85 FR 18377 (footnote omitted).

The April 2020 blocking charge amendments became effective on July 31, 2020. See 85 FR 20156.

B. The Voluntary-Recognition Bar

1. The Historical Development of the Voluntary-Recognition Bar

The NPRM carefully examined the historical development of the voluntary-recognition bar, culminating in the adoption of the April 2020 final rule and the Board's experience under that rule. 87 FR 66895–66898. We briefly summarize that discussion here.

Voluntary recognition of unions by employers, based on the union's majority support among employees, is firmly grounded in the provisions and policies of the National Labor Relations Act. The explicit policies of the Act, expressed in Section 1, are to ''encourage[e] the practice and procedure of collective bargaining'' and to ''protect[ ] the exercise by workers of . . . designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment.'' 29 U.S.C. 151. The Act expressly endorses ''practices fundamental to the *friendly adjustment* of industrial disputes arising out of differences as to wages, hours, or other working conditions.'' Id. (emphasis added). Section 8(a)(5) of the Act accordingly requires an employer ''to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).'' 29 U.S.C. 158(a)(5). Section 9(a), in turn, refers to ''[r]epresentatives

[11] After issuance of the NPRM, Bloomberg Law analyzed the data cited by the Board Majority in support of the 2019 NPRM and found that the Board Majority's empirical assertions were flawed. See Alex Ebert and Hassan A. Kanu, ''Federal Labor Board Used Flawed Data to Back Union Election Rule,'' *Bloomberg Law* (Dec. 5, 2019), available at *https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/X1NF9E1C000000?bna_news_filter=daily-labor-report* (''[A] Bloomberg Law review of data supporting the rulemaking found dozens of cases in which the board overstated the length of delays attributable to blocking charges over the last three years—overshooting the mark in one instance by more than 12 years, and in another by five years.'' Id. ''The board's data overcounted delays in more than one-third of cases—55 in all—in which they said blocking charges were filed.''). After publication of the Bloomberg Law article, the Board still did not issue a new NPRM correcting the data.

[12] Lauren McFerran was no longer serving on the Board when the final rule issued.

designated or selected . . . by the majority of the employees'' in an appropriate unit. 29 U.S.C. 159(a) (emphasis added). Finally, Section 9(c)(1)(A)(i) provides that employees seeking union representation may file an election petition with the Board if they allege ''that their employer *declines to recognize* their representative.'' 29 U.S.C. 159(c)(1)(A)(i) (emphasis added).

Thus, as the Supreme Court has observed, an employer may lawfully choose to recognize a union as the representative of its employees, based on a showing that a majority of employees have designated the union, as opposed to insisting on a Board-conducted representation election.[13] Once an employer voluntarily recognizes a majority-supported union, the union becomes the exclusive bargaining representative of employees, and the employer has a duty to bargain with it.[14] The Act does not impose any procedural restrictions on voluntary recognition beyond the requirement that the union have majority support.[15] Nor does the Act suggest in any way that a lawfully recognized union lacks the same full authority to represent workers as a Board-certified union. Both are the exclusive representative of employees with whom the employer must bargain.[16]

In 1966, the Board instituted the voluntary-recognition bar doctrine, temporarily insulating a recognized union from challenge to its representative status for a reasonable period for collective bargaining and so protecting the newly formed bargaining relationship.[17] The principle that a rightfully established bargaining relationship must be given a ''fair chance to succeed'' before being tested had already been recognized by the Supreme Court,[18] which had also endorsed the Board's adoption of a certification bar, insulating a Board-certified union from challenge for one year.[19] The voluntary-recognition bar doctrine was modeled on existing bar doctrines protecting not only bargaining relationships established by Board certification of a union following an election, but also relationships established by a Board order in an unfair labor practice case or by an unfair labor practice settlement.[20]

The Board's voluntary-recognition bar doctrine became well established over the next 40 years.[21] It was upheld by every federal court of appeals presented with the issue on review, as reflected in decisions from the District of Columbia, Second, Third, Sixth, Seventh, and Ninth Circuits.[22] In 1988, for example, the Court of Appeals for the District of Columbia Circuit explained that whatever advantages an election may have to determine employee support for a union, ''an employer's voluntary recognition of a majority union also remains 'a favored element of national labor policy.' '' [23]

In 2007, however, the decision of a divided Board in *Dana Corp.,* supra, 351 NLRB 434, undercut the doctrine. *Dana* imposed new preconditions for application of the voluntary-recognition bar, introducing a notice-and-election procedure. Under that procedure, after voluntarily recognizing a union, employers were required to post a notice informing employees of their right to file a decertification-election petition, or to support a rival union's representation petition, within 45 days. A petition supported by at least 30 percent of bargaining-unit employees would be processed by the Board, leading to an election. In other words, no allegation or evidence that the recognized union lacked majority support, whether at the time it was recognized or thereafter, was required. Only if no election petition were filed within the 45-day period following the notice posting would the voluntary-recognition bar apply.

The *Dana* Board majority acknowledged that voluntary recognition was ''undisputedly lawful'' under the Act [24] and that ''[s]everal courts of appeals ha[d] endorsed the [existing] recognition-bar doctrine.'' [25] But it asserted that ''[t]here is good reason to question whether [union-authorization] card signings [used to

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[13] *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 595–597 (1969); *United Mine Workers,* 351 U.S. at 72 fn. 8.

[14] See, *e.g., Brown & Connolly, Inc.,* 237 NLRB 271, 275 (1978), enfd. 593 F.2d 1373 (1st Cir. 1979).

[15] If the union lacks majority support, measured by the number of employees in the bargaining unit, then the employer's voluntary recognition violates Sec. 8(a)(2) of the Act, which makes it an unfair labor practice for an employer ''to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.'' *International Ladies' Garment Workers' Union* v. *NLRB (Bernhard-Altmann),* 366 U.S. 731, 733 fn. 2, 738 (1961). Notably, to be certified by the Board through an election, a union need only win a majority of *voting employees,* regardless of the size of the bargaining unit. *RCA Mfg. Co.,* 2 NLRB 159, 177–178 (1936).

[16] To be sure, a union that has been certified by the Board as the result of an election enjoys certain specific protections and privileges—related to protecting their representative status, including from challenges by rival unions—that are not extended to voluntarily recognized unions. Thus, Sec. 9(c)(3) of the Act, in providing that another Board election may not be held for twelve months after a valid election, effectively insulates a certified union from a rival's challenge for that period. In addition, the Act confers on certified unions: (1) protection against recognitional picketing by rival unions under Sec. 8(b)(4)(C); (2) the right to engage in certain secondary and recognitional activity under Sec. 8(b)(4)(B) and 7(A); and (3) in certain circumstances, a defense to allegations of unlawful jurisdictional picketing under Sec. 8(b)(4)(D).

No other provision of the Act treats certified unions and recognized unions differently, and certainly not with respect to their role as bona fide representatives of a bargaining unit. Reading into the Act any broader Congressional intent to treat recognized unions less favorably would be unwarranted. See *United Mine Workers,* supra, 351 U.S. at 73 (addressing statutory consequences of union's failure to comply with certain since-repealed requirements and observing that the ''very specificity of the advantages to be gained and the express provision for the loss of these advantages imply that no consequences other than those so listed shall result from noncompliance'').

[17] *Keller Plastics Eastern, Inc.,* 157 NLRB 583 (1966) (establishing voluntary-recognition bar for unfair labor practice cases); *Universal Gear Service Corp.,* 157 NLRB 1169 (1966) (applying voluntary-recognition bar in unfair labor practice case), enfd. 394 F.2d 396 (6th Cir. 1968); *Sound Contractors Assn.,* 162 NLRB 364 (1966) (establishing voluntary-recognition bar for representation cases).

[18] *Franks Bros. Co.* v. *NLRB,* 321 U.S. 702, 705 (1944) (upholding bargaining order against employer, despite union's loss of majority support, and observing that ''bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed'').

[19] *Brooks* v. *NLRB,* 348 U.S. 96, 100 (1954) (upholding certification bar and endorsing principle that ''[a] union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hot-house results or be turned out'').

[20] *Keller Plastics,* supra, 157 NLRB at 586–587. The *Keller Plastics* Board observed:

> [L]ike situations involving certifications, Board orders, and settlement agreements, the parties must be afforded a reasonable time to bargain and to execute the contracts, resulting from such bargaining. Such negotiations can succeed, however, and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.

Id. at 587.

[21] For cases applying the voluntary-recognition bar during this period, see, *e.g., Universal Gear Service Corp.,* supra, 157 NLRB 1169; *Montgomery Ward & Co.,* 162 NLRB 294 (1966), enfd. 399 F.2d 409 (7th Cir. 1968); *Blue Valley Machine & Mfg. Co.,* 180 NLRB 298 (1969), enfd. in relevant part 436 F.2d 649 (8th Cir. 1971); *Broad Street Hospital & Medical Center,* 182 NLRB 302 (1970), enfd. 452 F.2d 302 (3d Cir. 1971); *Timbalier Towing Co.,* 208 NLRB 613 (1974); *Whitemarsh Nursing Center,* 209 NLRB 873 (1974); *Rockwell International Corp.,* 220 NLRB 1262 (1975); *Brown & Connolly, Inc.,* supra, 237 NLRB 271; *Ford Center for the Performing Arts,* 328 NLRB 1 (1999); *MGM Grand Hotel, Inc.,* 329 NLRB 464 (1999); and *Seattle Mariners,* 335 NLRB 563 (2001).

[22] See, *e.g., Exxel/Atmos, Inc.* v. *NLRB,* 28 F.3d 1243, 1247–1248 (D.C. Cir. 1994); *NLRB* v. *Cayuga Crushed Stone, Inc.,* 474 F.2d 1380, 1383–1384 (2d Cir. 1973); *NLRB* v. *Frick Co.,* 423 F.2d 1327, 1332 (3d Cir. 1970); *NLRB* v. *San Clemente Publishing Corp.,* 408 F.2d 367, 368 (9th Cir. 1969); *NLRB* v. *Montgomery Ward & Co.,* 399 F.2d 409, 411–413 (7th Cir. 1968); *NLRB* v. *Universal Gear Service Corp.,* 394 F.2d 396, 398 (6th Cir. 1968).

[23] *NLRB* v. *Creative Food Design Ltd.,* 852 F.2d 1295, 1299 (D.C. Cir. 1988) (quoting *NLRB* v. *Broadmoor Lumber Co.,* 578 F.2d 238, 241 (9th Cir. 1978)).

[24] 351 NLRB at 436.

[25] Id. at 441.

demonstrate a union's majority support] accurately reflect employees' true choice concerning union representation.'' [26] The *Dana* Board accordingly justified the new notice-and-election procedure by concluding that the ''immediate post[-]recognition imposition of an election bar does not give sufficient weight to the protection of the statutory rights of affected employees to exercise their choice on collective bargaining representation through the preferred method of a Board-conducted election.'' [27]

Four years later, in *Lamons Gasket,* decided in 2011, the Board reversed the *Dana* decision, abandoned its novel notice-and-election procedure, and reinstated the traditional voluntary-recognition bar with one significant modification. For the first time, the Board defined the reasonable period for bargaining that established the length of the voluntary-recognition bar. It fixed the period at no less than six months, but no more than one year, and incorporated the multifactor test used by the Board to determine the analogous period when an employer has been ordered to bargain with a union.[28]

The *Lamons Gasket* Board carefully refuted the rationale of the *Dana* decision. It observed that, as demonstrated by the Act's provisions, Congress had endorsed the practice of voluntary recognition and had not subordinated it to the election process as a means for employees to exercise free choice concerning union representation.[29] It pointed to the Board's administrative experience under the *Dana* notice-and-election procedure, observing that experience refuted the *Dana* Board's skepticism that voluntarily recognized unions actually had majority support among employees: in only 1.2 percent of the cases in which a *Dana* notice was requested did employees ultimately decertify a voluntarily recognized union through an election.[30] It characterized the *Dana* notice-and-election procedure as inviting employees to reconsider their choice to be represented, which inappropriately suggested ''that the Board considers their choice . . . suspect.'' [31] It explained that the voluntary-recognition bar doctrine was consistent with the Board's other bar doctrines, all of which ''share the same animating principle: that a newly created bargaining relationship should be given a reasonable chance to succeed before being subject to challenge.'' [32] Finally, the *Lamons Gasket* Board pointed out that by creating a period of uncertainty about the union's representative status, the *Dana* notice-and-election procedure unnecessarily interfered with the bargaining process and made successful bargaining less likely.[33]

2. The April 2020 Amendments to the Voluntary-Recognition Bar

Lamons Gasket remained Board law for nine years [34] until it was overruled by the Board's 2020 rule, which essentially reinstated and codified the *Dana* notice-and-election procedure as Section 103.21 of the Board's Rules and Regulations, 29 CFR 103.21. Under the 2020 rule, neither the employer's voluntary recognition of a union, nor the first collective-bargaining agreement executed by the parties after recognition, will bar the processing of an election petition, unless: (1) the employer or the union notifies the Board's Regional Office that recognition has been granted; (2) the employer posts a prescribed notice of recognition ''informing employees that recognition has been granted and that they have a right to file a petition during a 45-day 'window period' beginning on the date the notice is posted''; (3) the employer distributes the notice electronically to employees, if electronic communication is customary; and (4) 45 days from the posting date pass without a properly supported election petition being filed.

The Board's justification for the 2020 rule adhered closely to the rationale of the *Dana* decision. The Board described elections as the statutorily preferred method for resolving questions concerning representation, citing Section 9(c)(3) of the Act (which prohibits a new election for the year following a valid election) and the specific statutory advantages granted only to Board-certified unions.[35] It noted that the Board did not supervise the recognition process and rejected the notion that the Act's unfair labor practice provisions were sufficient to address coercive conduct related to voluntary recognition.[36] Elections had the advantage of ''present[ing] a clear picture of employee voter preference at a single moment,'' the Board claimed. The reinstituted *Dana* notice-and-election procedure, the Board added, did not restrict or limit voluntary recognition or the bargaining obligations that follow from recognition. According to the Board, the new rule was also supported by the possibility that a recognized union would reach a collective-bargaining agreement during the bar period, triggering the separate, long-established contract-bar doctrine and extending the period during which the union's representative status could not be challenged.[37] These arguments, first advanced in *Dana,* had been persuasively addressed by the *Lamons Gasket* decision, which the 2020 rule overruled.

In overruling *Lamons Gasket,* the 2020 rule Board acknowledged the administrative experience under the *Dana* notice-and-election procedure (only 4.65 percent of *Dana* notices resulted in election petitions, and employees decertified voluntarily recognized unions in only 1.2 percent of cases in which a *Dana* notice was requested), but rejected the view that the *Dana* procedure had been revealed as unnecessary.[38] Instead, the Board focused on the fact that when a *Dana* election *was* held, the union was decertified about one-quarter of the time, and declined to infer—from the more than 95 percent of *Dana* notice cases in which *no* election petition was filed—that voluntarily recognized unions typically have majority support.[39] There was no evidence, the Board observed in turn, that the *Dana* procedure had discouraged voluntary recognition or discouraged or delayed collective bargaining.[40] In the Board's view, the cost to recognized unions of diverting resources from bargaining to campaigning was outweighed by the benefit of permitting employees to vote in an election.[41]

3. The 2022 Proposed Rule

In the NPRM, the Board explained that it ''propose[d] to rescind the current § 103.21 of the Board's Rules and

[26] Id. at 439.

[27] Id. at 434.

[28] 357 NLRB at 748 & fn. 34 (citing *Lee Lumber & Building Material Corp.,* 334 NLRB 399 (2001), enfd. *310 F.3d 209 (D.C. Cir. 2002)*).

[29] Id. at 740–742.

[30] Id. at 742.

[31] Id. at 744.

[32] Id. That principle was especially applicable in the case of bargaining relationships established voluntarily, the Board noted, because the Act not only explicitly promotes collective bargaining, but also encourages workplace cooperation, without government intervention, to avoid labor disputes. Id. at 746 (citing, inter alia, *H.K. Porter Co.* v. *NLRB,* 397 U.S. 99, 103 (1970)) (''The object of th[e] Act was not to allow governmental regulation of the terms and conditions of employment, but rather to insure that employers and their employees could work together to establish mutually satisfactory conditions.'').

[33] Id. at 747.

[34] During that period, no judicial decision had cast doubt on *Lamons Gasket* or questioned the long-established, judicially approved voluntary-recognition bar.

[35] 85 FR 18381.

[36] Id.

[37] Id.

[38] Id. at 18383.

[39] Id.

[40] Id. at 18384.

[41] Id. at 18385.

Regulations, providing for the processing of election petitions following voluntary recognition, and to replace it with a new rule that codifies the traditional voluntary-recognition bar as refined in *Lamons Gasket.*'' [42] The Board stated its preliminary view that ''restoring the voluntary-recognition bar, in its more traditional form . . . better serves the policies of the National Labor Relations Act, respecting—indeed, vindicating—employee free choice, while encouraging collective bargaining and preserving stability in labor relations.'' [43]

In explaining its preliminary support for rescission of the 2020 rule and codification of *Lamons Gasket,* the Board observed that experience under existing Section 103.21 ''seems to show that voluntary recognition almost always reflects employee free choice accurately.'' [44] If Section 103.21 were premised on suspicion of voluntary recognition, in turn, it would be ''in obvious tension'' with the Act itself and with the Supreme Court's *Gissel* decision, which permit lawful—and enforceable—bargaining relationships to be established without a Board election.[45] The Board noted, among other things, that: (1) several federal appellate courts had endorsed the voluntary-recognition bar, while none had rejected it; and (2) the 2020 Board had argued neither that the voluntary-recognition bar was irrational or inconsistent with the Act, nor that the current notice-and-election procedure was compelled by the Act.[46] The Board invoked the traditional, judicially-approved rationale for the recognition-bar doctrine: that, like other bar doctrines, it served to promote collective bargaining by protecting a bargaining relationship until it had a fair chance to succeed.[47] The Board expressed its initial view that the existing notice-and-election procedure ''has a significant potential to interfere with effective collective bargaining'' by subjecting a recognized union to challenges to its status as it sought to bargain or to administer a first collective-bargaining agreement.[48]

The Board also observed that the current rule permits such a challenge without evidence that the recognized union—which was required to show majority support in the bargaining-unit as a whole—had not been freely chosen and without a showing that it had since lost majority support in the unit.[49] Indeed, the union could lose its representative status based on an election decided by a majority of voting employees that might comprise a minority of unit employees.[50] That process thus tended to undermine, not promote, employee free choice, in the Board's preliminary view.[51]

Finally, the Board addressed its experience under the notice-and-election procedure restored by Section 103.21. It expressed the preliminary view that this ''experience provides no evidence that voluntary recognition is suspect'' and thus that the current rule would seem to have a reasonable tendency both to ''undermine employee free choice (as reflected in the lawful designation of the voluntarily recognized union) and to interfere with effective collective bargaining.'' [52] Examining the relevant data, the Board suggested it showed ''that the number of instances in which the notices have resulted in the filing of a petition or holding an election is vanishingly small—and the cases where the voluntarily recognized union was displaced to be almost nothing.'' [53] This tentative conclusion, the Board observed, was entirely consistent with the relevant data developed under the original *Dana* notice-and-election procedure.[54] The Board explained why, in line with the *Lamons Gasket* decision, it was inclined to disagree with the 2020 Board's dismissal of the data under *Dana.*[55] In any case, the Board observed, the ''data offer no affirmative suggestion that voluntary recognition is suspect as a means of ascertaining employee choice.'' [56]

In the interest of transparency, we provide in quarterly detail the administrative data made available since the NPRM issued, which is consistent with prior data cited in the NPRM and in the *Lamons Gasket* decision.[57] We have placed this new data in the administrative record, but we do not rely on it as a basis for the final rule. We also provide a consolidated tally of all experience based on data practicably available from the inception of the 2020 rule until the issuance of this final rule.[58]

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[42] 87 FR 66909. The proposed rule was limited to the representation-case context; the Board invited comment on whether the final rule should extend to unfair labor practices cases as well, *e.g.,* case where an employer is alleged to have violated Sec. 8(a)(5) by withdrawing recognition from a union, before a reasonable period for bargaining has elapsed. Id. The Board also specifically invited comment on whether it should adhere to the Board's decision in *Smith's Food,* supra, 320 NLRB 844, reaffirmed in *Lamons Gasket,* which governs situations in which a rival union files an election petition following the employer's voluntary recognition of another union. 87 FR 66910. Finally, the Board invited comment on the reasonable period for bargaining defined in the proposed rule and the effect of Sec. 103.21 on the collective-bargaining process. Id.

[43] Id.

[44] Id.

[45] Id. at 66910.

[46] Id. at 66909–66910.

[47] Id. at 66910. As noted previously, the Board specifically invited public comment on how the final rule should define a reasonable period for collective bargaining, establishing the duration of the voluntary-recognition bar. Id.

[48] Id.

[49] Id.

[50] Id.

[51] Id.

[52] Id. at 66911. The Board ''invite[d] commenters to submit additional empirical evidence to inform our views on this subject.'' Id.

[53] Id. The Board observed that ''only 0.4 percent of cases (1 out of 260 included cases) resulted in a petition being filed, and 0.4 percent resulted in a union's loss of representative status.'' Id. In the NPRM, the Board provided a quarter-by-quarter description of the administrative data from the inception of the 2020 rule through June 30, 2022. Id. at 66898. For this period, 260 requests for notices following voluntary recognition were filed with the Board. Id. In those cases, one election petition was subsequently filed, and no elections were held. In the one case where a petition was filed, the union disclaimed interest after its filing. Id. Thus, only 0.4 percent of recognition-notice requests resulted in election petitions and 0 percent of notices resulted in actual elections. If we count the union's disclaimer as equivalent to a decertification following an election loss, then employees opted not to retain the voluntarily recognized union in only 0.4 percent of the total cases in which recognition notices were requested. Id.

[54] Id. at 66911.

[55] Id. at 66911–66912.

[56] Id. at 66912.

[57] Since the issuance of the NPRM, NLRB FOIA data has been migrated to a new website. The new location for the previously listed data from the NPRM is: *https://www.securerelease.us/public-reading-room/agency/1509aa51-5edc-4d54-af75-f29074bde82c/component/794f2cd1-e0e1-466d-bb26-919fe5283155,* under the following file names: 2024–NLFO–00812–VR Cases Received Calendar Year 2020.xlsx; 2024–NLFO–00812–VR Cases Received Calendar Year 2021.xlsx; 2024–NLFO–00812–VR Cases Received Calendar Year 2022.xlsx. Note that, although the files are organized by calendar year, the files include tabs that contain the quarterly (or other incrementation) data under which the data was analyzed in the NPRM.

[58] The administrative data show as follows:

For the period from July 1, 2022, through September 30, 2022, administrative data shows 54 voluntary recognition notice requests in NLRB regions. None resulted in a petition being filed. However, in one case a petition was withdrawn under unknown circumstances.

For the period from October 1, 2022 through December 31, 2022, there were 52 notice requests. In two instances decertification petitions were filed. In one of these, the union disclaimed interest and in the other the union prevailed 14–8 in an election.

For the period from January 1, 2023 through March 31, 2023, there were 39 notice requests. In one instance a petition was dismissed and the notice pulled because of the union's lack of cards and in another the matter was closed because of the union's lack of cooperation.

For the period from April 1, 2023 through June 30, 2023, 92 notice requests occurred. In one case a decertification petition was dismissed for lack of a showing of interest. In another, the recognized union apparently stepped aside to allow another union to process its petition.

During the period from July 1, 2023 through September 30, 2023, there were 51 notice requests and no petitions filed. Two notice requests were

C. Section 9(a) Recognition in the Construction Industry

1. The Board's Historical Treatment of 9(a) Recognition in the Construction Industry

As discussed in greater detail in the NPRM, in response to the unique characteristics of the construction industry, Congress amended the Act in 1959 to adopt Section 8(f), which provides a limited exception to the Act's Section 9(a) requirement that a union must have majority support among the employees in an appropriate unit to be recognized as the exclusive collective-bargaining representative. Section 8(f) permits a construction employer and a union to enter into a prehire agreement establishing the union as the exclusive collective-bargaining representative, even where the union does not have the support of a majority of the construction employer's employees under Section 9(a).

In the seminal case of *John Deklewa & Sons,* the Board set forth a framework for applying Section 8(f) to further the dual Congressional objectives that prompted its enactment: ''attempt[ing] to lend stability to the construction industry while fully protecting employee free choice principles.'' 282 NLRB 1375, 1388 (1987), enfd. sub nom. *Iron Workers Local 3* v. *NLRB,* 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

As recounted in the NPRM, the *Deklewa* Board was mindful of a critical principle underlying Section 8(f): unions representing employees in the construction industry should not be treated less favorably than unions in other industries, including with regard to permitting a construction employer to be able to voluntarily recognize a union with majority support as its employees' 9(a) representative. Id. at 1387 fn. 53. Unions with majority support may choose to seek 9(a) recognition because, unlike where there is only an 8(f) relationship, it would allow them to enjoy the full panoply of rights and obligations available to unions serving as the exclusive collective-bargaining representative of employees in all other industries, including the irrebuttable presumption of majority support during the first three years of the contract and a rebuttable presumption of majority support at other times such as at the contract's expiration. Id. at 1385, 1387. Consequently, the Board in *Deklewa* adopted a rebuttable presumption that a collective-bargaining relationship in the construction industry is established under Section 8(f), but provided that a union asserting 9(a) status could rebut that presumption. Id. at 1385 fn. 41. For the 8(f) relationship to become a 9(a) relationship, a union—like unions representing employees in nonconstruction industries—must demonstrate a ''clear showing of majority support'' from the unit employees. Id. at 1385–1387 & fn. 53. Thus, both within the construction industry and outside it, establishing a bargaining relationship under Section 9(a) requires a proffered showing of majority support for the union.

Because Section 8(f) uniquely permits, in the construction industry, voluntary recognition in the absence of majority support, the Board has sought to avoid uncertainty over whether a grant of recognition is pursuant to Section 8(f) or 9(a) by requiring that 9(a) recognition in the construction industry be supported by positive evidence acknowledging a union's 9(a) status, such as agreed-upon language in a collective-bargaining agreement. *J & R Tile, Inc.,* 291 NLRB 1034, 1036 (1988) (''[A]bsent a Board-conducted election, the Board will require positive evidence that the union sought and the employer extended recognition to a union as the 9(a) representative of its employees before concluding that the relationship between the parties is 9(a) and not 8(f).''); see also *Golden West Electric,* 307 NLRB 1494, 1495 (1992) (finding positive evidence of a 9(a) relationship where the parties' voluntary recognition agreement unequivocally stated that the union claimed it represented a majority of employees and the employer acknowledged this was so, despite conflicting evidence as to whether the employer saw the union's authorization cards).

In *Staunton Fuel & Material, Inc.,* supra, the Board defined the minimum requirements for what must be stated in a written recognition agreement or a contract clause in a collective-bargaining agreement for it to suffice as evidence of a union having attained 9(a) status. 335 NLRB at 719–720. The Board in *Staunton Fuel,* following the approach of the Tenth Circuit, found that ''[a] recognition agreement or contract provision will be independently sufficient to establish a union's 9(a) representation status where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.'' Id. at 719–720 (citing *NLRB* v. *Triple C Maintenance, Inc.,* 219 F.3d 1147, 1154 (10th Cir. 2000), and *NLRB* v. *Oklahoma Installation Co.,* 219 F.3d 1160 (10th Cir. 2000)). Outside of the construction industry, where there is no 8(f) recognition, no similar evidentiary formality is needed for voluntary recognition because there is no need to distinguish presumptive 8(f) recognition from 9(a) majority recognition.

Significantly, the contract language attesting to a construction employer's 9(a) recognition of a union neither itself bestows 9(a) status nor substitutes for a union showing or offering to show evidence of its majority support. It does, however, provide a contemporaneous, written memorialization that a union had majority support at the time of the initial 9(a) recognition. Relying on the contract language is much preferable to trying to ascertain years in the future, should the union's 9(a) status later be challenged, whether the purported majority support had existed at the inception of the 9(a) relationship—in some cases many years before a dispute over a union's status has arisen—when evidence may no longer be easily available as witnesses and documents may disappear over time. Instead, the Board and the parties can look to the language adopted as a part of the parties' agreement to confirm that majority support existed when the 9(a) relationship was initially established.

Moreover, the Board in *Staunton Fuel* recognized that contract language can

apparently withdrawn, but no additional detail was provided.

For the period from October 1, 2023 through December 31, 2023, the administrative data shows that 69 notices were requested and no petitions were filed.

For the period from January 1, 2024 through March 31 2024, the administrative data shows that 59 notices were requested and no petitions were filed.

We discount the three instances where the notice request was withdrawn and/or the notice matter was closed (given the lack of information as to why this occurred in each case), conservatively construe the disclaimer case and the case where the matter was closed because the union appeared to lack cards as cases where the notice posting resulted in a change in representative status, and count the cases of a union victory and a decertification petitioner's lack of sufficient signatures as cases where the notice posting failed to effect a change in status.

Thus, we have the following totals: 413 notice requests, possibly leading to a change in representative status in 2 cases, *i.e.,* less than one percent (0.5%), of the total number.

The data is publicly available at the following URL: *https://www.securerelease.us/public-reading-room/agency/1509aa51-5edc-4d54-af75-f29074bde82c/component/794f2cd1-e0e1-466d-bb26-919fe5283155,* under the following files (which, for 2022 and 2023, are internally organized by tabs corresponding to each calendar quarter): 2024–NLFO–00812–VR Cases Received Calendar Year 2022.xlsx; 2024–NLFO–00812–VR Cases Received Calendar Year 2023.xlsx; 2024–NLFO–01446-final-VR cases received 1–1–2024 thru 3–31–2024.xlsx.

only serve as evidence of a union's 9(a) status if it is true. Because contract language alone would not necessarily evidence a union's majority support where there are questions about its veracity, the Board in *Staunton Fuel* left open the possibility that an employer could challenge the union's majority support within the 10(b) period. Id. at 720 & fn. 14. *Staunton Fuel* did not alter the Board's longstanding practice of considering all available evidence bearing on the nature of the parties' bargaining relationship where the contract language alone is not conclusive of whether the parties intended to establish a 9(a) rather than an 8(f) relationship. Id. at 720 fn. 15.

As the District of Columbia Circuit has recognized, if other evidence casts doubt on the assertion that the union enjoyed majority support at the time the employer purportedly granted 9(a) recognition, the contract language necessarily fails to satisfy its intended purpose and cannot be relied upon to demonstrate 9(a) status. For instance, in *Nova Plumbing, Inc.* v. *NLRB,* the District of Columbia Circuit reasoned that language in a collective bargaining ''cannot be dispositive at least where, as here, the record contains strong indications that the parties had only a section 8(f) relationship.'' 330 F.3d 531, 537 (D.C. Cir. 2003). The court pointed to strong evidence in the record that contradicted the contract language. Id. at 533. Subsequently, in *M & M Backhoe Service, Inc.* v. *NLRB,* the District of Columbia Circuit distinguished *Nova Plumbing* to uphold language in the parties' agreement establishing that the union was the 9(a) representative where there was evidence that the union actually had majority support, even if the employer never requested to see it. 469 F.3d 1047, 1050 (D.C. Cir. 2006).

Six years after *M & M Backhoe,* in *Allied Mechanical Services, Inc.* v. *NLRB,* the District of Columbia Circuit quoted the *Nova Plumbing* court but, in doing so, added emphasis to specify that the contract language cannot be dispositive of a union's 9(a) status in situations where the record contains contrary evidence. 668 F.3d 758, 766 (2012). More recently, in *Colorado Fire Sprinkler, Inc.* v. *NLRB,* the District of Columbia Circuit rejected the union's claim of 9(a) recognition where the union relied solely on demonstrably false contract language stating that the employer had ''confirmed that a clear majority'' of the employees had designated it as their bargaining representative, even though not a single employee had been hired at the time the parties initially executed their agreement containing that language. 891 F.3d 1031, 1040–1041 (D.C. Cir. 2018). The court concluded that the Board had improperly ''blink[ed] away record evidence undermining the credibility or meaningfulness of the recognition clauses'' and ''ma[de] demonstrably untrustworthy contractual language the be-all and end-all of Section 9(a) status.'' Id. at 1041.

In *Enright Seeding, Inc.,* the Board noted that neither *Nova Plumbing* nor *Colorado Fire Sprinkler* involved situations where the court rejected the union's claim of 9(a) status based solely on contract language because in both cases other evidence existed calling into question the union's majority status. 371 NLRB No. 127, slip op. at 4 fn. 18 (2022). However, responding to both court decisions, the Board clarified that ''contractual language can only serve as evidence of a union's 9(a) majority representation if it is true.'' Id. at 5. ''If other evidence casts doubt on the assertion that the union enjoyed majority support at the time the employer purportedly granted 9(a) recognition, then the contract language alone is insufficient to demonstrate the union's 9(a) status.'' Id. at 3–4.

As the Board noted in the NPRM, where there has been unlawful 9(a) recognition of a minority union, *Staunton Fuel* does not change longstanding Board precedent that an employer—regardless of whether a construction employer or a nonconstruction employer—engages in ''unlawful support.'' See *Bernhard-Altmann,* 366 U.S. at 738 (''The law has long been settled that a grant of exclusive recognition to a minority union constitutes unlawful support in violation of [Section 8(a)(2)], because the union so favored is given 'a marked advantage over any other in securing the adherence of employees.' '') (quoting *NLRB* v. *Pennsylvania Greyhound Lines,* 303 U.S. 261, 267 (1938)). Even if done in good faith, an employer violates Section 8(a)(2) and (1) by extending 9(a) recognition to a union that does not enjoy majority support, and the union's acceptance of such recognition in these circumstances violates Section 8(b)(1)(A). See *Joseph Weinstein Electric Corp.,* 152 NLRB 25, 39 (1965) (finding a construction employer's 9(a) recognition of and entering into an agreement with a union that does not enjoy majority support unlawful under Section 8(a)(2) and (1) and 8(b)(1)(A)).

Because an employer voluntarily recognizing a union and entering into a collective-bargaining agreement creates a contract bar of up to 3 years, no question of representation can be raised during that time. Thus, an employee or a rival union that seeks to challenge the propriety of the recognition generally cannot do so in a representation proceeding; rather, that allegation must be investigated and adjudicated in an unfair labor practice proceeding. If the Board finds that the employer entered into an agreement with a union that was a minority representative, the Board will remedy the violation by ordering the employer to cease recognizing the union and to repudiate the collective-bargaining agreement. See, *e.g., Bear Creek Construction Co.,* 135 NLRB 1285, 1286–1287 (1962) (ordering a construction employer that provided unlawful assistance to a union in obtaining membership applications and checkoff authorization cards to cease and desist from recognizing the union as its employees' collective-bargaining representative and giving effect to the parties' agreement).

With this safeguard against employer and union collusion in place, *Staunton Fuel* promotes critical federal labor law policies, including protecting employee free choice while fostering stability in collective-bargaining relationships. It also prevents construction employers from evading their duties under bargaining relationships that they entered into voluntarily and challenging an initial grant of 9(a) recognition from years earlier, since evidence confirming the union's majority support may no longer be available. After all, memories fade and the witnesses and documents pertinent to the initial 9(a) recognition disappear over time. Thus, *Staunton Fuel* furthers the policies of the Act and those set forth in *Deklewa.*

As recounted in the NPRM, six years after issuing *Deklewa,* the Board in *Casale Industries* fashioned a limitations period for challenging an initial grant of 9(a) recognition by relying on the same basic tenet from *Deklewa* discussed above—that unions representing construction-industry employees should be treated no less favorably than those representing nonconstruction-industry employees. The Board explicitly incorporated into the representation arena the teachings of the Supreme Court in *Local Lodge No. 1424, International Association of Machinists, AFL–CIO (Bryan Manufacturing Co.)* v. *NLRB,* 362 U.S. 411, 419 (1960), barring a challenge to a union's majority support if more than 6 months had elapsed from when it was initially granted recognition. 311 NLRB 951, 953 (1993).

The Court in *Bryan Manufacturing* based its decision on not only the statutory language of Section 10(b) of the Act but also the practical need for a time restriction on anyone—employers, unions, and employees—

from challenging a union's initial recognition. 362 U.S. at 416–417. As the Court acknowledged, quoting the legislative history from the Congress that enacted it, the 6-month limitations period under Section 10(b) is essential ''to bar litigation over past events 'after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused,' . . . and of course to stabilize existing bargaining relationships.'' Id. at 419.

The *Casale* Board concluded that the same interests acknowledged by the Court in *Bryan Manufacturing* should prevail in construction-industry representation cases: ''[P]arties in nonconstruction industries, who have established and maintained a stable Section 9 relationship, are entitled to protection against a tardy attempt to disrupt their relationship. Parties in the construction industry are entitled to no less protection.'' 311 NLRB at 953 (citing *Deklewa,* 282 NLRB at 1387 fn. 53); see also *NLRB* v. *Triple A Fire Protection, Inc.,* 136 F.3d 727, 737 (11th Cir. 1998), cert. denied 525 U.S. 1067 (1999).

2. The April 2020 Amendments to 9(a) Recognition in the Construction Industry

In the April 2020 rule, the Board adopted the proposed language from its August 12, 2019 NPRM to overrule *Staunton Fuel,* regarding the purported sufficiency of contract language alone to establish a 9(a) bargaining relationship. The April 2020 rule required, in the representation context, that parties retain additional positive evidence, beyond the parties' contract language, of the union's majority support at the time of its initial 9(a) recognition if they seek to rely on either the Board's voluntary recognition bar or contract bar in response to a challenge to the union's presumption of majority support. Moreover, under the April 2020 rule, a regional director must process a representation petition, even if a construction employer had provided unlawful assistance to a union by granting it 9(a) recognition despite the union's lack of majority support. The election would be held but, because of the unremedied unfair labor practices by the construction employer having granted and the union having accepted unlawful assistance, there would not be the laboratory conditions necessary to ascertain employees' uncoerced sentiments towards the union.

Moreover, even though the August 12, 2019 NPRM made no mention whatsoever of altering the bedrock principle from *Bryan Manufacturing,* reiterated in *Casale,* that a challenge cannot be made to a union's initial recognition by a construction employer after 6 months had elapsed, the Board's April 2020 rule stated in the preamble that it was overruling *Casale* ''to the extent that it is inconsistent with the instant rule'' and that ''we overrule *Casale's* holding that the Board will not entertain a claim that majority status was lacking at the time of recognition where a construction-industry employer extends 9(a) recognition to a union and 6 months elapse without a petition.'' 85 FR 18391. The practical effect of the Board's unanticipated overruling of *Casale* in the April 2020 rule was to require a construction employer and a union to retain any and all evidence of the union's initial majority support indefinitely because—no matter how much time had passed—a party would never be time-barred from challenging the union's 9(a) status by asserting that the union lacked majority support when it was initially granted 9(a) recognition.

3. The 2022 Proposed Rule

In the Board's November 4, 2022 NPRM, the Board proposed to rescind Section 103.22 in toto and to have the Board's previously effective caselaw precedent, such as *Staunton Fuel, Casale,* and other cases pertaining to the application of the voluntary recognition bar and contract bar in the construction industry govern 9(a) recognition in the construction industry. The Board stated in the NPRM that it preliminarily believed that this change may be required because Section 103.22 is premised both on overruling *Casale* and on revoking the limitations period for challenging voluntary recognition in the construction industry, neither of which were disclosed anywhere in the August 12, 2019 NPRM as steps under consideration by the Board. In the absence of the required notice in the August 12, 2019 NPRM, stakeholders and members of the public had no reason to submit comments on these critical related issues. As a result, the Board expressed its concern in the November 4, 2022 NPRM that the lack of public notice—and therefore a lack of commentary—may have affected the Board's ultimate decision to enact Section 103.22, especially in light of Section 103.22's resultant imposition of an onerous and unreasonable recordkeeping requirement on construction employers and unions.

III. Procedural Background

A. Pending Litigation Challenging the April 2020 Rule

On July 15, 2020, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the Baltimore-DC Metro Building and Construction Trades Council sued the NLRB (D.D.C. No. 20–cv–1909) (''*AFL–CIO II*''), alleging that the entirety of the April 2020 rule was invalid because, among other things, it is arbitrary, capricious, an abuse of discretion, and in violation of the NLRA.

On August 11, 2020, the NLRB filed a motion to transfer *AFL–CIO II* to the United States Court of Appeals for the District of Columbia Circuit, arguing that the district court lacked subject-matter jurisdiction. The AFL–CIO opposed the transfer. The NLRB previously advanced similar threshold jurisdictional arguments in *AFL–CIO* v. *NLRB* (''*AFL–CIO I*'') (D.D.C. Case No. 20–cv–675 (KBJ)), which, at the time, was pending decision by the District of Columbia Circuit in another case (Case No. 20–5223), concerning changes to the Board's representation case procedures that the Board promulgated on December 18, 2019. On October 23, 2020, the district court in *AFL–CIO II* ordered a temporary stay pending resolution of the parties' cross-appeals of *AFL–CIO I,* where the same jurisdictional issue would be decided. On January 17, 2023, the D.C. Circuit rejected the argument that district courts lack subject-matter jurisdiction over challenges to Board rules that are exclusively concerned with representation elections. *AFL–CIO* v. *NLRB,* 57 F.4th 1023, 1027, 1032–1034 (D.C. Cir. 2023). On January 31, 2023, pursuant to the parties' joint motion, *AFL–CIO II* was further stayed. Within 14 days of the issuance of the final rule or by September 28, 2023 (whichever occurs sooner), the parties were required to file a joint status report advising whether any disputes remain. On September 26, 2023, the parties jointly moved for a further stay of the litigation through March 31, 2024. Following the parties' April 1, 2024 joint status report, on April 18, 2024, United States District Judge Beryl A. Howell extended the stay of the litigation until fourteen days after issuance of this final rule, or until October 14, 2024, whichever occurs sooner.

B. Rulemaking Petitions Seeking Rescission of the April 2020 Rule

Meanwhile, on November 16, 2021, the AFL–CIO and North America's Building Trades Unions (''NABTU'')

filed a joint petition for rulemaking (''2021 petition'') requesting that the Board rescind each of the amendments made in the April 1, 2020 final rule. The 2021 petition urged the Board to: (1) rescind Section 103.20, arguing that the Board violated the Administrative Procedure Act in two respects (by presenting erroneous data in the NPRM and failing to correct those errors in the final rule, and by adopting a final rule that was not a logical outgrowth of the proposed rule) and additionally arguing, as a policy matter, that the changes to the blocking charge policy were ill-conceived; (2) rescind Section 103.21, alleging that the Board had violated the Administrative Procedure Act by failing to respond to the AFL–CIO's comment that the rule violated the Board's duty of neutrality with respect to employees' choice concerning union representation; and (3) rescind Section 103.22, because the NPRM had not proposed overruling *Casale* and did not advise the public that it was contemplating overruling *Casale* and thus failed to provide the public with an opportunity to be heard on such a fundamental modification to collective-bargaining relationships in the construction industry.

On April 7, 2022, UNITE HERE International Union (''UNITE HERE'') filed a petition (''2022 petition'') for rulemaking specifically requesting the Board to rescind Section 103.21 of the April 2020 rule, which allows the Board to process decertification petitions received within 45 days of an employer's voluntary recognition of a union as its employees' exclusive bargaining representative. UNITE HERE's 2022 petition also expressed its support for the 2021 rulemaking petition filed by AFL–CIO and NABTU regarding the other amendments contained in the April 2020 rule.

C. The Notice of Proposed Rulemaking

As noted, on November 4, 2022, the Board issued a Notice of Proposed Rulemaking proposing to rescind the three amendments to its rules and regulations made by the April 2020 rule and to replace two of the amendments with different regulatory language. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,* 87 FR 66890 (November 4, 2022). The NPRM set forth the Board's preliminary view that the Board's historical blocking charge policy, as amended by the December 2014 rule, better serves the Act's policies than the April 2020 blocking charge amendments, and therefore proposed to rescind the April 2020 blocking charge amendments and return to the pre-April 2020 blocking charge policy regulatory language. 87 FR 66891, 66902–66909. The NPRM also set forth the Board's preliminary view that the voluntary-recognition bar as articulated in *Lamons Gasket* better serves the policies of the National Labor Relations Act than did the April 2020 rule, and therefore proposed to rescind the April 2020 amendments governing the filing and processing of petitions for a Board-conducted representation election following an employer's voluntary recognition of a union as the majority-supported collective-bargaining representative of the employer's employees, and to codify pre-April 2020 rule case law in this area. 87 FR 66890–66891, 66909–66912. The NPRM also set forth the Board's preliminary view that rescission of Section 103.22 of the April 2020 rule governing Section 9(a) recognition in the construction industry was required because that section was premised on overruling *Casale,* but revoking the limitations period for challenging voluntary recognition in the construction industry was not mentioned anywhere in the 2019 NPRM as being under consideration by the Board, and because the previously effective case law would better serve the policies of the Act. 87 FR 66891, 66912–66914. The NPRM proposed that the previously effective case-law precedent would govern Section 9(a) recognition in the construction industry, such as *Staunton Fuel, Casale,* and other cases pertaining to the application of the voluntary-recognition and contract bars. 87 FR 66912.

After carefully considering the comments, which are summarized and addressed in detail below, as well as the views expressed by the April 2020 Board, we have decided, for the reasons set forth below, to rescind the 2020 amendments and to adopt the proposed amendments to the blocking charge policy and voluntary-recognition bar doctrine regulatory language, with certain modifications described further below.

IV. Statutory Authority To Engage In This Rulemaking

Section 6 of the NLRA, 29 U.S.C. 156, provides that ''[t]he Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of Title 5 [the Administrative Procedure Act, 5 U.S.C. 553], such rules and regulations as may be necessary to carry out the provisions of this [Act].'' [59]

[59] Sec. 6 of the Act refers to the Board's authority to ''rescind'' rules, while Sec. 553 of the Administrative Procedure Act refers to the ''repeal'' of rules. See also 5 U.S.C. 551(5) (''[R]ule making' means agency process for formulating, amending, or repealing a rule''). For purposes of the instant rule, we treat these terms as interchangeable.

These provisions include Sections 1, 7, 8, and 9 of the Act, 29 U.S.C. 151, 157, 158, and 159, respectively discussed in relevant part in Section II.A., B., and C., above. The amendments made by the instant rule implicate these provisions of the Act, and Section 6 grants the Board the authority to promulgate rules that carry out those provisions. In addition, Section 9(c), 29 U.S.C. 159(c)(1), specifically contemplates rules governing representation-case procedures, stating that elections will be held ''in accordance with such regulations as may be prescribed by the Board.'' The Supreme Court unanimously held in *American Hospital Association* v. *NLRB,* 499 U.S. 606, 609–610 (1991), that the Act authorizes the Board to adopt both substantive and procedural rules governing representation-case proceedings. The Board interprets Sections 6 and 9 as authorizing the instant rulemaking proceeding.

V. The Amendments in This Rulemaking

A. Rescission of the April 1, 2020 Blocking Charge Amendments and Return to Pre-April 2020 Blocking Charge Policy

1. Comment Overview

The Board received a number of comments from interested organizations, a member of Congress, labor unions, and individuals regarding its proposal to rescind the changes made by the April 2020 rule to the Board's blocking charge policy. We have also considered the views of our dissenting colleague.

Comments in favor of the proposed rule make both process-oriented and substantive arguments. Some commenters argue that the Board should rescind the April 2020 rule because of its serious procedural flaws. They cite, inter alia, the April 2020 Board's failure to correct the faulty data contained in the 2019 NPRM that led to the April 2020 rule and the April 2020 rule's adoption of amendments that were not a logical outgrowth of the NPRM, both of which commenters claim impaired the integrity of the rulemaking process (and the public's ability to intelligently evaluate and comment on the proposed rule), and rendered the final rule arbitrary and capricious.[60] At least one

[60] See, *e.g.,* comments of The American Federation of Labor & Congress of Industrial Organizations (''AFL–CIO'') and North America's

comment points out that the April 2020 Board's failure to correct the faulty data contained in its NPRM has infected this rulemaking because commenters on the instant NPRM continue to rely on that faulty data.[61] The same commenter also charges that the April 2020 Board failed to respond to substantive well-supported comments.[62]

As for the substance, many comments in favor of the proposed rule argue that returning to the Board's historical blocking charge policy, as amended by the December 2014 rule, is appropriate because it better protects employee free choice by enabling regional directors to shield employees from having to vote under coercive conditions.[63] Commenters claim that the April 2020 rule constitutes ''a betrayal'' of the Board's statutory responsibility to ensure free and fair elections and ''an abdication'' of the Board's responsibility to preserve laboratory conditions because the April 2020 Rule requires regional directors to conduct elections under coercive conditions.[64] Some commenters relatedly argue that the April 2020 rule must be rescinded because it allows for such absurd results as requiring the Board to conduct an election notwithstanding overwhelming evidence of egregious unfair labor practices that would necessitate setting aside any election that was held, and which can lead to petitioners withdrawing their petitions.[65]

Some commenters also argue that the April 2020 rule wastes governmental and party resources by requiring regional directors to conduct, and the parties and employees to participate in, elections that will be set aside on account of the coercive conditions, and that holding an election under those coercive circumstances further taints any rerun election.[66] At least one comment notes that the blocking charge policy was publicly endorsed by the Agency's regional directors, the Board officials who are charged with administering the policy in the first instance.[67]

Many commenters in favor of the proposed rule also argue that the April 2020 Board failed to demonstrate a need or reasoned basis for its amendments. For example, some comments note that the April 2020 Board mischaracterized the blocking charge policy by suggesting that unfair labor practice charges automatically blocked elections.[68] Commenters further note that the December 2014 rule adopted certain provisions that enable regional directors to swiftly dispose of nonmeritorious blocking requests that could delay elections, and that, as the April 2020 Board acknowledged, the number of blocked elections declined after the December 2014 rule went into effect.[69]

Commenters further note that the April 2020 Board did not deny that the majority of decertification petitions—as well as the majority of employer-filed RM petitions and initial organizing RC petitions—are never blocked and that the merit rate for blocking charges was substantially higher than the merit rate for unfair labor practice charges generally.[70] They also point out that the filing of meritorious blocking charges by definition provides no support for the April 2020 Board's decision to substantially eliminate the blocking charge policy.[71] And some comments argue that ''the 2020 majority made no effort whatsoever to separate well-founded blocking charges from baseless blocking charges or, in other words, merited delay from unmerited delay.'' [72] In fact, commenters further claim that the April 2020 Board failed to substantiate its repeated claim that unions knowingly file meritless charges to delay their ouster in the decertification context.[73] Some commenters argue that the April 2020 Board's concern—that the blocking charge policy robs the election petition of momentum by depriving employees of a prompt election—ignores that the momentum may be the product of unfair labor practices.[74] These commenters further argue that concerns about a petition's momentum cannot justify the April 2020 Board's decision to eliminate the ability of regional directors to delay elections in the initial organizing context, because petitioners may obtain a prompt election if they so desire under the blocking charge policy notwithstanding their filing of unfair labor practice charges.[75]

Commenters in favor of the NPRM also argue that, although the April 2020 rule results in elections taking place sooner, the April 2020 rule does not necessarily expedite the effectuation of employees' choice. They note that the April 2020 rule expressly provides that the certification of the results of the election is delayed until the merits of the charge are determined. Accordingly, in their view, the April 2020 rule simply shifts the adjudication of unfair labor practices from before the election until after the election.[76] At least one commenter relatedly argues that the April 2020 rule ignores the frustration that employees feel in not having their votes effectuated until the merits of the charge are determined. This commenter claims that the blocking charge policy makes it more likely that the election that is held will in fact count, by

Building Trades Unions (''NABTU'') (collectively ''AFL–CIO/NABTU''); AFL–CIO/NABTU reply comments; National Nurses United (''NNU''); International Union of Operating Engineers (''IUOE''); Service Employees International Union (''SEIU'').

[61] See reply comments of AFL–CIO/NABTU.

[62] See comments of AFL–CIO/NABTU.

[63] See comments of American Federation of State, County and Municipal Employees (''AFSCME''); AFL–CIO/NABTU; General Counsel Jennifer A. Abruzzo (''GC Abruzzo''); Brotherhood of Railroad Signalmen (''Railroad Signalmen''); Center for American Progress (''CAP''); Economic Policy Institute (''EPI''); NNU; joint comment filed by the Los Angeles County Federation of Labor, AFL–CIO, International Brotherhood of Teamsters Locals 848, 572, 396, and 63 and UNITE HERE Local 11 (collectively the ''LA Federation''); SEIU; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (''UA''); United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO/CLC (''USW'').

[64] See comments of EPI; LA Federation; NNU; SEIU.

[65] See comments of SEIU; AFL–CIO/NABTU; LA Federation.

[66] See comments of AFL–CIO/NABTU (initial and reply); AFSCME; EPI; GC Abruzzo; LA Federation; NNU; SEIU; UA; USW. In the view of these commenters, simply holding a rerun election does not fully and completely remedy the holding of an election in which employees were forced to cast their votes on the question concerning representation in an atmosphere of coercion. The commenters explain that this is so because there is a substantial risk that the tainted election will compound the effects of the unfair labor practices: an employee who voted against union representation under the influence of the employer's unlawful conduct is unlikely to reconsider the issue and change their vote in the rerun election. Commenters such as UA support this by citing academic research finding that decisionmakers ''who have expressly committed to a position on an issue are often reluctant to change that position when asked to make that decision again,'' a phenomenon known as status quo bias. Moreover, according to the AFL–CIO/NABTU, which agrees that it is psychologically difficult for employees to change their votes even if the ballots are impounded, ''[t]he tainted votes that the 2020 Rules require regional directors to conduct affect a second election . . . all the more so when the ballots are opened and counted'' as they are in the vast majority of cases under the April 2020 rule. The AFL–CIO/NABTU comment points to studies showing the impact (on voter turnout and choice) of disclosing early returns and exit poll results while the polls remain open in political elections. NNU claims that this taints future rerun elections by inaccurately depicting the bargaining unit's support for the union and which can deter employees from choosing to vote in a rerun election.

[67] See comments of GC Abruzzo.

[68] See comments of AFL–CIO/NABTU; SEIU.

[69] See comments of AFL–CIO/NABTU; AFSCME; GC Abruzzo; LA Federation; SEIU; UA.

[70] See comments of AFL–CIO/NABTU; GC Abruzzo; LA Federation; SEIU.

[71] See AFL–CIO/NABTU; LA Federation; SEIU.

[72] Comments of AFL–CIO/NABTU. See also comments of SEIU.

[73] See comments of AFL–CIO/NABTU; SEIU.

[74] See comments of AFL–CIO/NABTU; GC Abruzzo; NNU; SEIU.

[75] See id.

[76] See comments of AFL–CIO/NABTU; LA Federation; USW.

enabling regional directors to delay elections until the merits of a pending charge alleging misconduct are determined.[77]

Still other commenters argue that the April 2020 rule's requirement that the Board conduct elections in virtually all cases does not comport with the Supreme Court's holding in *Gissel* and makes it harder to obtain a remedial bargaining order, particularly in the context of Section 10(j) litigation.[78]

On the other hand, both our dissenting colleague and commenters opposed to the proposed rule urge the Board to adhere to the April 2020 rule's blocking charge provisions. Because the pre-April 2020 blocking charge policy delayed elections, commenters claim that the policy interferes with employees' Section 7 rights and/or is antidemocratic and interferes with employees' constitutional rights of free assembly and association.[79] Some commenters also claim the blocking charge policy is racist,[80] can impose a collective-bargaining representative on employees without the employees having the chance to vote for representation in the first place,[81] and infringes on workers' alleged ''statutory right to hold decertification elections at any time outside of 12 months following a previous NLRB-supervised election.'' [82] Other commenters claim that by denying employees a prompt vote, the policy unfairly punishes employees for the misconduct of their employer and ignores their desires.[83] Commenters additionally argue that the blocking charge policy not only makes it harder for employees to leave a union but forces them to pay dues to the union they wish to decertify after the collective-bargaining agreement expires.[84] At least one commenter argues that because the workforce can turn over during the period of time while the merits of the blocking charge are being determined, the blocking charge policy can disenfranchise employees and undermine the goal of confining the pool of eventual voters to those employed at the time the question concerning representation arises.[85] Our dissenting colleague also advances a similar argument.

Some commenters go so far as to suggest that the blocking charge policy can disenfranchise the entire unit by preventing unit employees from *ever* exercising their right to vote against union representation.[86] Some commenters, along with our dissenting colleague, further argue that the policy disenfranchises employees based on a mere administrative determination made by a regional director, rather than by the Board itself following an unfair labor practice hearing, and that regional director practice varied widely resulting in substantial inconsistency in application of the blocking charge policy.[87]

Commenters offer additional arguments against returning to the pre-April 2020 blocking charge policy, including claims that it rendered illusory the ability of employers to file RM petitions, that it unjustifiably treated decertification petitioners worse than petitioning unions in an initial organizing context by only allowing unions to proceed to an election, and that the April 2020 rule better accords with Section 8(a)(2), which forbids an employer to grant recognition as an exclusive bargaining representative to a union that represents a minority of bargaining-unit employees.[88] Both our dissenting colleague and some commenters additionally argue that judicial criticism of the blocking charge policy counsels against returning to it.[89]

Our dissenting colleague, along with many commenters opposed to the proposal, also argue that because the blocking charge policy can substantially delay elections based on mere allegations of unfair labor practices, the policy incentivizes the filing of meritless or frivolous charges, particularly in the decertification context where employees are seeking to rid themselves of their incumbent union representative.[90] At least one commenter argues that although the

[77] See comments of USW.

[78] See comments of GC Abruzzo; NNU.

[79] See, *e.g.,* comments of Associated Builders and Contractors (''ABC''); Virginia Foxx, Chairwoman, Committee on Education and the Workforce (''Chairwoman Foxx''); U.S. Chamber of Commerce (''Chamber''); the Coalition for a Democratic Workplace (''CDW''); HR Policy Association (''HRPA''); National Right to Work Legal Defense Foundation (''NRTWLDF''); Marvin Graham (''Graham''); Rachel Greszler (''Greszler''); John Weber (''Weber''); Julius Scaccia (''Scaccia''); David L. Chaump (''Chaump''); Trent Bryden (''Bryden''); Jennifer Christiano (''Christiano''); Clark Coleman (''Coleman''); William Fedewa (''Fedewa''); Pierre Giani (''Giani''); Sam Gompers (''Gompers''); Leonard Mead (''Mead''); Kenneth Morris (''Morris''); Anonymous 143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76. Scaccia appears to suggest that that the Board should outline a specific time frame for elections similar to the regular election cycles in the political arena.

[80] See comments of Bryden.

[81] See, *e.g.,* comments of Chaump.

[82] See, *e.g.,* comments of Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Paul Andrews; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Marvin Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; William Fedewa; R.E. Fox; John Gaither; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

[83] See, *e.g.,* comments of ABC; NRTWLDF; Anonymous 143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Paul Andrews; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; R.E. Fox; John Gaither; Allan Gardiner; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

Our dissenting colleague makes a slightly different version of this argument, contending that ''a prompt opportunity for employees to vote in a Board election *itself* safeguards employee free choice.''

[84] See comments of Chairwoman Foxx; Chamber; NRTWLDF; Scaccia.

[85] See, *e.g.,* comments of CDW.

[86] See comments of CDW; HRPA; NRTWLDF.

[87] See, *e.g.,* comments of CDW; HRPA. On the other hand, the NRTWLDF comments suggest that there was no variation; in its experience, regional directors invariably and automatically blocked elections immediately upon the filing of *any* union-filed unfair labor practice charge. See comments of NRTWLDF.

[88] See comments of CDW; NRTWLDF reply comments; Paul Andrews; Anonymous 143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Marvin Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; R.E. Fox; John Gaither; Allan Gardiner; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

Our dissenting colleague also takes the view that the historical blocking charge policy rendered the RM petition safe harbor under *Levitz* illusory and that it treated decertification petitioners less favorably than unions in an initial organizing context.

[89] See comments of ABC; CDW; Chamber; NRTWLDF.

[90] See, *e.g.,* comments of ABC; CDW; Chairwoman Foxx; Chamber; Christiano; Graham; HRPA; NRTWLDF; Scaccia.

NPRM complained about the April 2020 rule imposing unnecessary costs on the parties and the Agency by requiring the Agency to conduct elections that will not count, the NPRM ignored that the blocking charge policy imposes unnecessary costs on the parties and the Agency by incentivizing parties to file nonmeritorious unfair labor practice charges that have to be investigated.[91]

Both our dissenting colleague and many commenters argue that there is no need to return to the pre-April 2020 blocking charge policy to protect employee rights even in cases where the concurrent charges are meritorious. Thus, they note that the April 2020 rule withholds the certification of the results of an election until the merits of the concurrent unfair labor pace charges are determined, thereby allowing for a rerun election (or a bargaining order) if the Board finds, after an unfair labor practice hearing, that a party has in fact committed unfair labor practices that interfered with the election that was conducted notwithstanding the pendency of the unfair labor practice charge.[92] Both our dissenting colleague and at least one commenter argue that there is no need to return to the Board's historical blocking charge policy to protect employee free choice, because the Board's recent decision in *Rieth-Riley Construction Co.,* supra, 371 NLRB No. 109, permits regional directors to dismiss petitions rather than conduct elections in the face of concurrent unfair labor practice charges when they believe that employer conduct has interfered with laboratory conditions.[93]

Some commenters complain that the NPRM contained no data analyzing the effect of the April 2020 amendments, that the April 2020 rule has succeeded in its goal of permitting employees to vote promptly without interfering with the employees' Section 7 rights to register a free and untrammeled choice for or against union representation, and that absent proof of a spike in the number of elections being set aside under the April 2020 amendments, it would be unreasonable for the Board to rescind the April 2020 amendments.[94] According to some commenters, the Board would be engaging in needless policy oscillation if it rescinds the April 2020 rule, which would threaten the legitimacy of the Agency.[95]

At least one commenter argues that if the Board decides to reinstate the pre-April 2020 blocking charge policy, it should include a provision allowing decertification petitioners to intervene as full parties in blocking charge litigation to protect and effectuate their statutory right to an election.[96]

2. Explanations for Adoption of NPRM Proposal To Return to the Pre-April 2020 Blocking Charge Policy; Responses to Blocking Charge Comments

Having carefully considered the comments, the views of the April 2020 Board, and the views of our dissenting colleague, we have determined, consistent with the NPRM, that returning to the Board's historical blocking charge policy, as modified by the December 2014 rule, represents a better balance of the Board's statutory interests in protecting employee free choice, preserving laboratory conditions in Board-conducted elections, and resolving questions concerning representation expeditiously than does the April 2020 rule, which at times requires regional directors to conduct elections under coercive circumstances. 87 FR 66903. The final rule restores and codifies the historical blocking charge policy, as modified by the December 2014 rule. Under the final rule, we shall once again permit regional directors to delay the processing of an election petition at the request of a party who has filed a charge alleging conduct that would interfere with employee free choice in an election or conduct that is inherently inconsistent with the petition itself—provided that the party simultaneously files an adequate offer of proof and agrees to promptly make its witnesses available, and provided no exception is applicable—until the merits of the charge can be determined.

We agree with the views of the commenters who oppose the NPRM (and with the April 2020 Board and our dissenting colleague) that, under ordinary circumstances, the Board should conduct elections expeditiously. Nevertheless, the Board has regularly confronted cases involving unlawful conduct that either interferes with the ability of employees to make a free choice about union representation in an election or is inherently inconsistent with the petition itself. In our considered judgment, the April 2020 rule runs counter to the policies of the National Labor Relations Act by requiring regional directors to conduct, and employees to vote in, elections in a coercive atmosphere that interferes with employee free choice. Many comments agree.[97] We note in this regard that the April 2020 Board itself acknowledged that the April 2020 rule *does* at times require regional directors to conduct elections in coercive circumstances that interfere with employee free choice, over the objections of charging parties who are parties to the representation proceeding. 85 FR 18370 & fn. 10, 18378–18380. Thus, the April 2020 Board acknowledged that under its rule, the regional director shall continue to process the petition and conduct the election despite the filing of a blocking request and that the results of the elections must be set aside and rerun elections ordered when the Type I charges are found to have merit and to have affected the election. 85 FR 18370, 18378–18380. The April 2020 Board further acknowledged that the ballots cast in cases involving certain types of Type II charges will either not be honored (if the ballots had been counted) or will ''never be counted'' (if they were impounded because an unfair labor practice complaint issued within 60 days of the election) if the unfair labor practice charges are found to have merit. 85 FR 18369–18370, 18378–18380.

We also note that several of the commenters who oppose the proposed rule implicitly acknowledge this as well; thus, for example, the HRPA states that it ''does not imply that all such [blocking] charges are meritless.'' [98] In short, it cannot be denied that under the April 2020 amendments, regional directors *are* required to run—and employees, unions, and employers *are* required to participate in—some elections conducted under coercive conditions that interfere with employee free choice. 85 FR 18370, 18378–18380. And because the April 2020 rule requires regional directors to run—and employees, unions, and employers to participate in—some elections that will not resolve the question of representation, the April 2020 rule

[91] See comments of NRTWLDF.

[92] See, *e.g.,* comments of CDW; Chairwoman Foxx; Chamber; NRTWLDF (initial and reply). At least one commenter relatedly attacks then-Member McFerran's analysis of blocking charge data in the dissent to the 2019 NPRM that led to the April 2020 rule by claiming that she should not have deemed charges meritorious if they resulted in a settlement. See comments of NRTWLDF.

[93] See comments of NRTWLDF (initial and reply).

[94] See comments of CDW; NRTWLDF (initial and reply).

[95] See comments of CDW; Chamber.

Our dissenting colleague similarly criticizes the majority's decision to rescind the April 2020 rule on the grounds that doing so may spur policy oscillation and disserve the Agency's stakeholders. We address this argument in greater detail in Section VII, below.

[96] See comments of NRTWLDF.

[97] See, *e.g.,* comments of AFL–CIO/NABTU; AFSCME; CAP; EPI; GC Abruzzo; LA Federation; NNU; Railroad Signalmen; SEIU; UA; USW.

[98] See also comments of CDW, Chairwoman Foxx, Chamber, and NRTWLDF, acknowledging that under the April 2020 rule, the Board can order a rerun election in those cases where elections were conducted under coercive circumstances over the objections of the charging party.

imposes unnecessary costs on the parties and the Board. We also conclude, in agreement with several commenters,[99] that the April 2020 rule's position—that nothing is more important under the Act and its policies than having employees vote without delay in virtually every case (even though it means they will be required to vote in elections under coercive conditions)—cannot be squared with the Board's responsibility to provide laboratory conditions for ascertaining employee choice during Board-conducted elections. See *General Shoe Corp.,* 77 NLRB at 127 (''In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.''); *Mark Burnett Productions,* 349 NLRB at 706 (''The Board's policy of holding the petition in abeyance in the face of pending unfair labor practices is designed to preserve the laboratory conditions that the Board requires for all elections and to ensure that a free and fair election can be held in an atmosphere free of any type of coercive behavior.'').

The April 2020 rule also creates perverse incentives for employers to commit unfair labor practices. By requiring the Board to conduct elections in all cases where Type I unfair labor practice conduct has occurred and many cases where Type II unfair labor practice conduct has occurred, the rule creates a perverse incentive for unscrupulous employers to commit unfair labor practices because the predictable results will be: (1) to force unions to expend resources in connection with elections that will not reflect the free choice of the employees; and (2) to create a sense among employees that seeking to exercise their Section 7 rights is futile. This possibility may well induce unions to forego the Board's electoral machinery in favor of recognitional picketing and other forms of economic pressure, potentially exacerbating industrial strife and risking contravening the statutory policy favoring ''eliminat[ing] the causes of certain substantial obstructions to the free flow of commerce.'' 29 U.S.C. 151.[100]

It is not surprising that although the Board's application of the blocking charge policy in a particular case had occasionally been criticized, no court invalidated the policy itself during the more than eight decades that it had been in effect. To the contrary, the courts had recognized that the salutary reasons for the blocking charge policy ''do not long elude comprehension,'' and that the policy had ''long-since [been] legitimized by experience.'' *Bishop* v. *NLRB,* 502 F.2d 1024, 1028, 1032 (5th Cir. 1974).[101] We find further support for our decision to return to the pre-April 2020 blocking charge policy in the fact that the April 2020 Board had jettisoned that policy even though the Agency's regional directors—the career officials who are charged with administering the policy in the first instance—had publicly endorsed the policy. 87 FR 66904 & fn. 105.

We also agree with the comments filed by AFL–CIO/NABTU, LA Federation, and USW that argue that, although the April 2020 rule certainly results in many elections being held more promptly in the face of concurrent unfair labor practice charges than they would have been held under the pre-April 2020 blocking charge policy, the April 2020 rule does not necessarily result in the employees' choice being effectuated in a significantly shorter period of time. This is so because, as the April 2020 Board conceded, the certification of the results of the election conducted under such circumstances must still await a determination of the merits of the unfair labor practice charge.[102] And it takes the same amount of time to determine the merits of an unfair labor practice charge whether the charge is investigated before the election or after the election. For example, under the April 2020 rule, the results of a promptly held decertification election are set aside if the charge is ultimately found to be meritorious. Then, a new election is conducted after the unfair labor practice is remedied. Only then can employees' choice actually be effectuated. The situation is thus the same as under the pre-April 2020 blocking charge policy, when a meritorious charge blocked the election until the unfair labor practice was remedied. As for cases involving nonmeritorious charges, even under the April 2020 rule, the incumbent union will not actually be decertified until the charge is ultimately determined to lack merit—despite the employees having voted in the decertification election.[103] Moreover, it stands to reason that the representation proceedings that were blocked the longest under the pre-April 2020 blocking charge policy were those cases litigated before administrative law judges, then the Board, and then the courts of appeals, rather than the cases

[99] See, *e.g.,* comments of EPI; LA Federation; NNU; SEIU.

[100] Commenters such as NNU share this concern.

[101] Accord *Blanco* v. *NLRB,* 641 F. Supp. 415, 417–418, 419 (D.D.C. 1986) (rejecting claim that Sec. 9 imposes on the Board a mandatory duty to proceed to an election whenever a petition is filed, notwithstanding the pendency of unfair labor practice charges alleging conduct that would interfere with employee free choice in an election, and holding that the use of the blocking charge rule was ''in accord with the Board's policy to preserve the 'laboratory conditions' necessary to permit employees to cast their ballots freely and without restraint or coercion.''); see also *Remington Lodging & Hospitality, LLC* v. *Ahearn,* 749 F. Supp. 2d 951, 960–961 (D. Alaska 2010) (''[W]here a petition to decertify the union is related to the ULP charges, the 'blocking charge rule' prioritizes the agency's consideration of the ULP charges to ensure that any decertification proceedings are handled in an uncoerced environment.'').

As the Fifth Circuit explained in *Bishop,* 502 F.2d at 1028–1029 (citations omitted):

> It would be particularly anomalous, and disruptive of industrial peace, to allow the employer's [unfair labor practices] to dissipate the union's strength, and then to require a new election which 'would not be likely to demonstrate the employees' true, undistorted desires,' since employee disaffection with the union in such cases is in all likelihood prompted by [the situation resulting from the unfair labor practices].
>
> If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning. Nothing would be more pitiful than a bargaining order where there is no longer a union with which to bargain.
>
> Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.
>
> If the employees' dissatisfaction with the certified union should continue even after the union has had an opportunity to operate free from the employer's unfair labor practices, the employees may at that later date submit another decertification petition.

Our dissenting colleague criticizes our ''heavy reliance on the Fifth Circuit's positive perceptions of the historical policy fifty years ago.'' We find this criticism puzzling. *Bishop* remains good law. In addition, the language quoted above persuasively articulates the policy justifications militating in favor of our decision to return to the historical blocking charge policy.

[102] See 85 FR 18370 (''Finally, for all types of charges upon which a blocking-charge request is based, the final rule clarifies that the certification of results (including, where appropriate, a certification of representative) shall not issue until there is a final disposition of the charge and a determination of its effect, if any, on the election petition.''); 29 CFR 103.20(d) (April 1, 2020) (''For all charges described in paragraphs (b) or (c) of this section, the certification of results (including, where appropriate, a certification of representative) shall not issue until there is a final disposition of the charge and a determination of its effect, if any, on the election petition.'').

[103] The same is true in elections held in the context of an initial organizing campaign. Elections will be set aside if the charges that are subject of requests to block are meritorious, and the results of the elections will not be certified until the charges that are subject of requests to block are determined to be nonmeritorious.

involving nonmeritorious charges that can be weeded out administratively at the regional level. The same is true under the April 2020 rule. In short, the actual resolution of the question of representation can take a substantial period of time under the April 2020 rule, even though an election was promptly held.

For the reasons set forth below, the arguments of the April 2020 Board and the commenters opposing the NPRM do not persuade us that we should continue to adhere to the April 2020 rule.

a. Comments Regarding the Effect of Delay on the Petition's Momentum and the Pre-Election Narrative

Like the April 2020 Board, our dissenting colleague and many commenters opposed to the NPRM emphasize the obvious: that the blocking charge policy causes delays in conducting elections. From this, they argue that the blocking charge policy impedes employee free choice.[104] However, the conclusion of the April 2020 Board, our colleague, and the commenters does not necessarily follow from their premise. To the contrary, we believe that the blocking charge policy better protects employee free choice notwithstanding the delay that the policy necessarily entails. As the Board has previously observed, ''it is immaterial that elections may be delayed or prevented by blocking charges, because when charges have merit, elections *should* be [delayed or] prevented.'' *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 728 fn. 57 (2001) (emphasis in original). We thus agree with the observation of the December 2014 Board that ''[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'' 79 FR 74429. After all, if the circumstances surrounding an election interfere with employee free choice, then, contrary to the April 2020 rule, it plainly is *not* ''efficient'' to permit employees to cast ballots ''speedily'' because the ballots cast in such an election cannot be deemed to ''accurately'' reflect employees' true, undistorted desires. 85 FR 18367, 18380, 18393. That is why, as the April 2020 Board acknowledged, elections conducted under coercive circumstances under its amendments will not actually resolve the question of representation, provided the charging party files election objections (or a request to block). 85 FR 18370, 18378–18380.

The April 2020 Board complained that employees who support decertification petitions are adversely affected by blocking charges because delay robs the petition effort of momentum and thereby threatens employee free choice. 85 FR 18367, 18379, 18393 (finding it appropriate to issue the April 2020 Rule ''[f]or all the reasons set forth . . . [in the April 2020 preamble] and in the NPRM[.]''). See also 84 FR 39937. Our dissenting colleague reiterates this view. However, this justification for the April 2020 amendments misapprehends the core statutory concerns underlying the blocking charge policy. As then-Member McFerran noted in her dissent to the 2019 NPRM, if a party has committed unremedied unfair labor practices that interfere with employee free choice, then elections in those contexts will not accurately reflect the employees' true desires and therefore should not be conducted. 84 FR 39944. Indeed, the momentum that the April 2020 rule seeks to preserve may be entirely illegitimate, as in cases where the employer unlawfully initiates the decertification petition, or the momentum may be infected by unlawful conduct, as in cases where after a decertification petition is filed, the employer promises to reward employees who vote against continued representation or threatens adverse consequences for employees who continue to support the incumbent union. Notwithstanding the impact of delay on the decertification petition's momentum, we think the delay is justified to safeguard employee free choice.[105]

We also note that the April 2020 rule applies to petitions filed in initial organizing campaigns, not just to petitions filed in the decertification context. The April 2020 Board's concern about the blocking charge policy's negatively impacting a petition's momentum has little persuasive force where blocking charges are filed by a petitioning union in the initial organizing context. Because the final rule restores the December 2014 rule's

[104] See 85 FR 18366, 18367, 18372–18373, 18375–18380, 18393. See also, *e.g.,* comments of ABC; CDW; Chairwoman Foxx; Chamber; HRPA; NRTWLDF; Graham; Greszler; Weber; Scaccia; Bryden; Christiano; Giani; Morris; Anonymous 143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76.

[105] We also find unpersuasive the April 2020 Board's claim that its amendments are superior to the pre-April 2020 blocking charge policy because the April 2020 rule allows the balloting to occur when the parties' respective arguments are ''fresh in the mind[s] of unit employees.'' 84 FR 39937–39938, 85 FR at 18379, 18393. Under the Board's historical blocking charge policy, balloting also occurred when the parties' respective arguments were ''fresh in the minds'' of unit employees, because parties had an opportunity to campaign after the regional director resumed processing a petition (once either the unfair labor practice conduct was remedied or the director determined that the charge lacked merit). Thus, all the April 2020 rule ensures is that balloting will occur when the unremedied *coercive conduct* is fresh in the minds of unit employees, undermining the Act's policy of protecting employee free choice in the election process and contravening the Board's duty to conduct fair elections.

We also disagree with the April 2020 Board's view that its amendments eliminate the ability of either party to control the pre-election narrative as to whether the Board has found probable cause that the employer has committed unfair labor practices. 84 FR 39938, 85 FR 18379, 18393. As then-Member McFerran pointed out in her dissent to the 2019 NPRM, under the Board's historical blocking charge policy, neither the Board nor the regional director notified unit employees that the petition was being held in abeyance because there was ''probable cause'' to believe that a party had committed unfair labor practices. 84 FR 39946 fn. 70. To be sure, under the Board's historical blocking charge policy, a party was free to tell unit employees that the regional director had blocked action on the petition because a party stood accused of committing unfair labor practices, and the charged party was free to tell the unit employees that it was innocent of any wrongdoing and that the charging party was responsible for the delaying the employees' opportunity to vote. But, under the April 2020 rule, parties are similarly free to inform unit employees, in advance of the election in the vast majority of cases, that although employees will be permitted to vote, the results of the election will not be certified until a final determination is made as to the merits of the unfair labor practice charge(s) alleging that a party has engaged in conduct that interferes with employee free choice (or that the regional director will impound the ballots cast in the election for at least 60 days—rather than immediately opening and counting the ballots following the election—because a party stands accused of committing unfair labor practices concerning the legitimacy of the petition itself). The charged party, meanwhile, will be free to inform unit employees that it is innocent of any wrongdoing and that the charging party is responsible for the delay in the certification of the results or the opening and counting the ballots.

The April 2020 Board also suggested that employees would be less frustrated or confused under its amendments—which provide that elections will be held with the ballots being promptly opened and counted in the vast majority of cases involving requests to block, notwithstanding that the results of the election will nevertheless not be certified until there has been a final disposition of the unfair labor practice charge and a determination of its effects on the petition by the Board—than they would be under the pre-April 2020 blocking charge policy, which delays the election itself until the merits of the charge are determined. 85 FR 18367, 18370, 18379–18380, 18393. See also 84 FR 39937–39938. We reject that speculative proposition. Permitting employees to vote and opening and counting ballots, yet delaying the certification of the results, might very well equally frustrate employees who must await the outcome of the Board's investigation of the charge to learn whether the results of the election will be certified and, at worst, actively mislead them by conveying a materially false impression of the level of union support. In short, just as was the case under the Board's historical blocking charge policy, the question of representation cannot be resolved under the April 2020 rule until the merits of the charge have been determined. In any event, the April 2020 rule also did not address the frustration that is felt by employees who, under the April 2020 rule, are required to vote under coercive circumstances. See comments of GC Abruzzo; LA Federation; NNU; SEIU; UA.

changes to the historical blocking charge policy, an election cannot be delayed on the basis of a concurrent charge filed by a union unless the union requests that its charge block the petition. 29 CFR 103.20 (Dec. 15, 2014); Casehandling Manual Section 11730 (January 2017).[106] In other words, a petitioner in the initial organizing context can indeed obtain a prompt election notwithstanding its unfair labor practice charge. On the other hand, if the petitioner requests that its charge delay the election, then the petitioner obviously believes that the employer's unfair labor practices have already halted the petition's momentum. In short, the April 2020 Board's concern cannot justify depriving regional directors of the authority to delay elections in the initial organizing context at the request of petitioners.[107]

b. Comments Regarding Rieth-Riley and the Availability of a Rerun Election

Both our dissenting colleague and many comments filed in opposition to the NPRM also argue that there is no need to return to the pre-April 2020 blocking charge policy to protect employee rights even when meritorious unfair labor practice charges have been filed prior to an election. We disagree. We are not persuaded by the NRTWLDF's comments that there is no need to return to the Board's pre-April 2020 blocking charge policy because the Board's recent decision in *Rieth-Riley Construction Co.,* 371 NLRB No. 109 (2022), permits regional directors to dismiss petitions rather than conduct elections in the face of concurrent unfair labor practice charges ''when they believe employer conduct has interfered with laboratory conditions.'' [108] To begin, we find the argument to be a non sequitur; as the Board noted in *Rieth-Riley,* the merit-determination dismissal process was itself merely an ''aspect of the blocking charge policy.'' Id., slip op. at 1. The Casehandling Manuals in effect prior to both the 2014 Rule and the 2020 Rule explicitly set forth merit-determination dismissals as part of the blocking charge policy. See, *e.g.,* Casehandling Manual Sections 11730.1, 11730.2, 11730.3 (August 2007) (noting that Type II blocking charges may cause a petition to be dismissed after a determination as to their merit, whereas Type I charges result in petition being held in abeyance until the charge is dismissed or remedied); Casehandling Manual Sections 11730.1, 11730.2, 11730.3 (January 2017) (same). In short, the instant rule simply restores the status quo that existed prior to the April 2020 rule (*i.e.,* it maintains the merit-determination dismissal procedure while also restoring the other aspects of the blocking charge policy, which for example permit regional directors to hold petitions in abeyance based on Type I charges).

In any event, we conclude that *Rieth-Rile*y's merit-determination dismissal procedure alone does not adequately protect employee rights. To begin, the merit-determination dismissal procedure does not permit a regional director to dismiss a petition rather than conduct an election whenever the director finds merit to charges alleging conduct that would interfere with laboratory conditions. Rather, as the Board's decision in *Rieth-Riley* makes clear, and as the NRTWLDF recognizes elsewhere in its comments, the merit-determination dismissal procedure is available ''only with respect to a Type II charge,'' *i.e.,* a charge alleging conduct that if proven is ''inherently inconsistent with the petition.'' 371 NLRB No. 109, slip op. at 3. Thus, the merit-determination dismissal procedure is not available in cases involving Type I charges that allege conduct that would merely interfere with employee free choice in an election were one to be held, and this is true even if the director has found merit to the Type I charge. Indeed, under the current legal regime, regional directors are required to conduct elections and open and count the ballots in cases where Type I charges are pending, even if the regional director has found merit to the charges. In other words, regional directors are required to conduct elections in the initial organizing context even if the regional director has found merit to a charge alleging, for example, that an employer has promised benefits if its employees vote against union representation and has threatened to close the plant if the employees vote in favor of union representation. Regional Directors are also required to conduct decertification elections even if, for example, a regional director has found merit to a charge alleging that after the filing of the decertification petition, the employer promised employees benefits if they vote against the incumbent union and threatened adverse consequences if they vote for continued representation. And this is so, as the comments filed by SEIU and AFL–CIO/NABTU note, even if the employer *admits* engaging in the unlawful conduct. Thus, notwithstanding the Board's decision in *Rieth-Riley,* regional directors currently *are* required to conduct elections even when the employer has committed Type I unfair labor practices that interfere with employee free choice and destroy laboratory conditions.

Moreover, in our view, and contrary to our dissenting colleague's position, the merit-determination dismissal procedure does not even adequately protect employee rights in all cases where Type II charges have been filed. Thus, as the Board unanimously held in *Rieth-Riley,* the merit-determination dismissal procedure is available only when there has been a determination by the Regional Director that the Type II charge has merit. 371 NLRB No. 109, slip op. at 3 (merit-determination dismissals ''hinge on [the Regional Director's] determination . . . that [the Type II] unfair labor practice charge has merit''). Thus, as the AFL–CIO/NABTU point out in their reply comment, where the regional director has not had sufficient time to investigate the charge and make a merit determination, the merit-determination dismissal procedure is not available even for Type II charges, and the regional director is required to run an election.

Many commenters [109] also agree with the April 2020 Board (85 FR 18378–18380) that there is no need for the blocking charge policy because the Board may always throw out the results of the first election and conduct a rerun election if the Board finds, after an unfair labor practice hearing, that a party has in fact committed unfair labor practices that interfered with the election that was conducted notwithstanding the pendency of the unfair labor practice charge(s). They posit that a rerun election fully protects employee free choice. They reason that, because the second election will not be conducted until the employer has complied with the Board's traditional remedies for the unfair labor practice conduct found to have interfered with employee free choice, employees will be able to exercise free choice for or against union representation when the rerun election is held.[110]

[106] Similarly, as commenters such as AFL–CIO/NABTU and NNU note, under the pre-December 2014 blocking charge policy, a union in an organizing context could request to proceed to an election notwithstanding its charge.

[107] Of course, if an employer files a charge against a petitioning union with an adequately supported request to block, then the election in the initial organizing context may indeed by delayed. But, just as is the case with regard to blocking charges filed in the decertification context, we think the delay here is justified to protect employee free choice.

[108] Our dissenting colleague takes a similar position, arguing that *Rieth-Riley* ''undermines the justification for returning to'' the historical blocking charge policy.

[109] See, *e.g.,* comments of CDW; Chairwoman Foxx; Chamber; NRTWLDF.

[110] Our dissenting colleague similarly argues that because ''the Board's traditional remedies are

We are not persuaded by these comments. To begin, during the more than eight decades that the blocking charge policy was in effect, the Board never viewed its authority to rerun elections as obviating the need for the policy. This is not surprising. The Board is tasked with ensuring free and fair elections, and the Board's goal is to conduct elections under conditions as nearly ideal as possible. We undermine that goal when we require employees to vote under coercive circumstances that interfere with free choice.[111]

Moreover, in our considered policy judgment, a return to the pre-April 2020 status quo better protects employee rights by putting the unit employees in a position that more closely approximates the position that the unit employees would have been in had no party committed unfair labor practices interfering with employee free choice, than the position employees are put in under the April 2020 rule. Had no party committed unfair labor practices, employees would not be forced to vote in an atmosphere of coercion. However, as the 2020 Board conceded (85 FR 18378, 18379, 18380), its amendments, by definition, sometimes require employees to vote under coercive circumstances by requiring the regional director to conduct elections over the objections of the charging party in virtually all cases involving pending unfair labor practice charges. This means that when a rerun election is conducted after the charged party takes all the remedial action required by the Board order or settlement agreement, the union will have to convince each employee who voted against it under coercive conditions to switch their vote, something the union normally would not have had to do under the blocking charge policy because the regional director would not have held an election until the unfair labor practice conduct was remedied. And, as the Board previously concluded in its December 2014 rule (79 FR 74418–74419) and as several commenters note,[112] there is a substantial risk that the tainted election will compound the effects of the unfair labor practices, because employees who voted against union representation under the influence of the employer's coercion may well be unlikely to change their votes in the rerun election even if they vote in the second election. See *Savair Mfg. Co.,* 414 U.S. at 277–278. To make matters even worse, the April 2020 rule's additional requirement that the ballots be immediately opened and counted following the election (except in a very limited subset of cases) means that, following a loss, the union will also have to convince employees (including those employees who voted in favor of the union in the first election) that it is worth voting for the union—and to risk incurring retaliation from their employer—even though employees will know that the union already lost the earlier election. This is something the union normally would not have had to do under the pre-April 2020 blocking charge policy, because the regional director would not have held an election until the unfair labor practice was remedied. Put simply, when the Board sets aside an election because of employer unfair labor practice conduct, it does not erase the memory of that election outcome and the illegalities that led to it being set aside; after all, the posting of the remedial notice reminds employees of those illegalities.[113]

Indeed, we find it significant that the April 2020 rule itself implicitly conceded that employees and the union they seek to represent them are in fact harmed when the employees are required to vote under coercive circumstances, even though the first election will not count and they will be permitted to vote in a second election if a request to block or objections are filed. Thus, the April 2020 Board acknowledged that the harm employees will suffer by voting in an election that will later be set aside can be addressed ''in some cases'' by impounding the ballots. 85 FR 18378. Moreover, the rule expressly justified requiring that the ballots be opened and counted in all cases involving Type I misconduct and many cases involving Type II misconduct on the ground that keeping the ballots secret would fail to provide an adequate disincentive for unions to file blocking charges in the context of a decertification election. 85 FR 18379–18380. The April 2020 Board relied on the premise that the immediate opening and counting of the ballots in the vast majority of cases provides a disincentive for unions to file meritless charges seeking to block the election because tallying the ballots reveals to employees that the union is acting against their wishes. 85 FR 18379–18380. Thus, under April 2020 rule's premise, if the union has lost the election that was conducted despite the pendency of charges alleging coercive conduct, that circumstance will (or is at least very likely to) have a meaningful effect on employees' perception of the union.

We further note that the position of commenters critical of the proposed rule—that elections should be held in virtually all cases (no matter the severity of the employers' unfair labor practices) because of the availability of a rerun election—is difficult to square with the Supreme Court's approval in *Gissel* of the Board's practice of *withholding* an election or rerun election and issuing a bargaining order when the employer has committed serious unfair labor practice conduct disruptive of the election machinery and where the Board concludes that ''the possibility of erasing the effects of [the employer's] past [unfair labor] practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through [union authorization] cards would, on balance, be better protected by a bargaining order . . . . '' *Gissel Packing Co.,* 395 U.S. at 591–592, 610–611, 614–615.[114] As the Court explained,

> If the Board could enter only a cease-and-desist order and direct an election or a rerun [election] . . . where an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined a union's majority and caused an election to be set aside . . . it would in effect be rewarding the employer and allowing him 'to profit from [his] own wrongful refusal to bargain,' . . . while at the

perfectly capable of dissipating the coercive effects of unfair labor practices so as to permit a free and fair election in all but extreme cases,'' the majority should not ''assume that the Board's traditional remedies for pertinent unfair labor practices will necessarily be inadequate to ensure a fair rerun election in those cases where an initial election was held but later set aside under the 2020 Rule.''

[111] It also bears mentioning that, as discussed in greater detail below, the Board lacks authority to conduct a rerun election in the absence of election objections (or a request to block), which may not be filed or may be withdrawn even if the election was/is scheduled to be conducted under coercive circumstances. Thus, the commenters and our dissenting colleague ignore the real possibility that the only election that is conducted under the April 2020 rule will be the election conducted under coercive circumstances.

[112] See, *e.g.,* comments of AFL–CIO; LA Federation; NNU; UA.

[113] The NRTWLDF's reply comment questions any reliance on *Savair,* supra. It notes that employees will have voted by secret ballot election in the first election (that ends up getting set aside because of the unlawful conduct) and will again vote by secret ballot in the rerun election. However, because the ballots cast in the first election conducted under coercive circumstances are in fact opened and tallied in the vast majority of cases under the April 2020 rule, the employees do in fact know how a majority of their colleagues have voted before the second election. It is insufficient to argue, as our dissenting colleague does, that ''opening and counting ballots reveals only *collective* union sentiment at a moment in time, not *individual* union sentiments.'' In every case, employees obviously know how they themselves voted in the first election.

[114] See comments of NNU.

same time severely curtailing the employees' right freely to determine whether they desire a representative. The employer could continue to delay or disrupt the election processes and put off indefinitely his obligation to bargain; and any election held under these circumstances would not be likely to demonstrate the employees' true, undistorted desires.

Id. at 610–611. And this applies equally in the decertification context. See *Bishop,* 502 F.2d at 1029 (''Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.'').[115]

For similar reasons, we reject the NRTWLDF's contention in its comments that it would be internally inconsistent for the Board to conclude in this rulemaking that employee free choice is not adequately protected via the rerun election process.[116] The Board has historically deemed it appropriate, outside the *Gissel* bargaining order and blocking charge contexts, to conduct a rerun election following a finding of objectionable misconduct after the employer has fully complied with the Board's traditional remedies for the unfair labor practice conduct found to have interfered with employee free choice. However, the fact that under the Board's limited remedial authority the Board can (absent a showing of a card majority) only conduct a second election after the unfair labor practice conduct—that interfered with the initial election—has been remedied certainly does *not* mean that requiring employees to vote under coercive conditions and then giving them a second chance to vote puts the employees and the labor organization at issue in the position that most closely approximates the position they would have occupied had no party committed unfair labor practices.

c. Comments Regarding the Pre-April 2020 Blocking Charge Policy's Reliance on Mere Administrative Determinations Made by Regional Directors and Alleged Inconsistent Application of That Policy

Both the dissenters to the 2022 NPRM and the April 2020 Board also found fault with the pre-April 2020 blocking charge policy because it permitted a mere discretionary ''administrative determination'' as to the merits of unfair labor practice charges to delay employees' ability to vote whether they wish to obtain, or retain, union representation, especially since there is always the possibility that the Board could ultimately conclude, contrary to the regional director, that the charge lacks merit. 87 FR 66918 fn.173; 85 FR at 18367, 18377, 18393).[117] Our

[115] The April 2020 Board itself acknowledged that its rule in some cases requires the regional director to hold an election, notwithstanding that following the election the Board will set it aside and issue a *Gissel* bargaining order—rather than conduct a rerun election—because a fair rerun election cannot be held. 85 FR 18380. Our dissenting colleague similarly acknowledges that the Board also may need to ''redress the harm from certain serious unfair labor practices by issuing a general bargaining order.'' In our view, no valid statutory purpose is served by requiring the Board to conduct an election in such circumstances. Moreover, requiring the Board to conduct elections in such circumstances plainly wastes party and agency resources.

Long after the close of the comment period, the Board issued its decision in *Cemex Construction Materials, Pacific, LLC,* holding in part that an employer violates Sec. 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as the Sec. 9(a) representative by the majority of employees in an appropriate unit unless the employer promptly files a petition pursuant to Sec. 9(c)(1)(B) of the Act (an RM petition) to test the union's majority status or the appropriateness of the unit, assuming that the union has not already filed an RC petition pursuant to Sec. 9(c)(1)(A). 372 NLRB No. 130, slip op. at 25–26 & fn. 141 (2023), rev. pending, Case 23–2302 (9th Cir.). *Cemex* also held, however, that ''if the employer commits an unfair labor practice that requires setting aside the election, the petition (whether filed by the employer or the union) will be dismissed, and the employer will be subject to a remedial bargaining order.'' Id. slip op. at 26–27 (an employer ''may not insist on an election, by refusing to recognize and bargain with the designated majority representative, and then violate the Act in a way that prevents employees from exercising free choice in a timely way.''). Thus, ''if the Board finds that an employer has committed unfair labor practices that frustrate a free, fair, and timely election, the Board will dismiss the election petition and issue a bargaining order, based on employees' prior, proper designation of a representative for the purpose of collective bargaining pursuant to Sec[.] 9(a) of the Act.'' Id. slip op. at 28–29.

No commenter has requested the Board to reopen the comment period for the purpose of addressing *Cemex.* We would reject any suggestion that *Cemex* eliminates the need for the Board to return to the pre-April 2020 blocking charge policy. To be sure, both *Cemex* and the Board's pre-April 2020 blocking charge policy are designed to protect the Sec. 7 rights of employees to freely choose whether to be represented for purposes of collective bargaining and the integrity of the Board's election process by shielding employees from having to vote, and the Board from having to conduct elections, under coercive circumstances. See *Cemex,* 372 NLRB No. 130, slip op. at 27–28, 34 fn. 179 (because the ''new standard will more effectively disincentivize employers from committing unfair labor practices prior to an election . . . , this standard will advance the Board's interest in 'provid[ing] a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.' . . . Similar concerns about the importance of 'provid[ing] a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees,' . . . prompted the Board to issue a notice of proposed rulemaking to solicit public input on the desirability of restoring its historical blocking charge policy. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships,* 87 [FR] 66890, 66902–66903 (Nov. 4, 2022).'') (internal citations omitted). However, by definition, *Cemex* only applies where the Union can establish that majority support by authorization cards or other means and where the Union has demanded recognition on the basis of that majority support. By contrast, a union may petition for an election based merely on a 30 percent showing of interest. See Casehandling Manual Section 11023.1 (August 2007). Thus, in some cases where a union has petitioned for an election and the employer has committed unfair labor practices that would interfere with employee free choice in an election were one to be held (or where an employer that has filed an RM petition commits unfair labor practices that interfere with employee free choice), a *Cemex* bargaining order will not be available.

We further note that, as the Board acknowledged in *Cemex,* ''[m]any unions may prefer pursuing certification following a Board election[—rather than invoking *Cemex*—] as certification confers certain benefits on unions. These include: Sec. 9(c)(3)'s 1-year nonrebuttable presumption of majority status; Sec. 8(b)(4)(C)'s prohibition against recognitional picketing by rival unions; Sec. 8(b)(4)(D)'s exception to restrictions on coercive action to protect work jurisdiction; and Sec. 8(b)(7)'s exception from restrictions on recognitional and organizational picketing. See also *Gissel,* 395 U.S. at 598–599 & fn. 14 (1969) (''A certified union has the benefit of numerous special privileges which are not accorded unions recognized voluntarily or under a bargaining order[.]''). *Cemex,* 372 NLRB No. 130, slip op. at 25 fn. 140.

In our considered policy judgment, restoration of the pre-April 2020 blocking charge policy provides a measure of protection to employees and unions that would prefer Board certification as well as to the unit employees in those cases where unions have petitioned for an election with an adequate showing of interest (but one that falls of short of a majority) or without demanding recognition from the employer. And for the reasons explained at length above, the pre-April 2020 blocking charge policy also provides a measure of protection to unit employees in the context of decertification elections (and employer-filed RM petitions).

[116] See comments of NRTWLDF. As noted above, our dissenting colleague also points to the availability of a rerun election as a basis for preferring the April 2020 rule.

[117] Some comments echo this concern. See, *e.g.,* comments of CDW; HRPA. Many comments similarly complain that union officials should not be allowed to delay or block workers' right to hold decertification votes using ''unproven 'blocking charges.' '' See, *e.g.,* comments filed by Paul Andrews; Anonymous 143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Marvin Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; R.E. Fox; John Gaither; Allan Gardiner; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

dissenting colleague reiterates this position. In our view, this argument does not constitute a persuasive reason for declining to return to the pre-April 2020 blocking charge policy. To begin, we find the criticism internally inconsistent. The NPRM dissenters were part of a unanimous Board holding that the April 2020 rule did not do away with the merit-determination dismissal procedure. See *Rieth-Rile*y, supra, 371 NLRB No. 109, slip op. at 1, 3, 8. Thus, even under the April 2020 rule, a petition could be dismissed—thereby blocking an election—based on a mere ''administrative determination'' by the regional director that a complaint should issue so long as the complaint concerned a Type II charge, notwithstanding that the Board could ultimately conclude, contrary to the regional director, that the charge lacked merit. No reasoned explanation has been offered for deferring to the regional director's administrative determination as to the merits of those kinds of Type II charges, but not to the regional director's administrative determination concerning the merits of other kinds of unfair labor practice charges that would warrant setting aside an election or dismissing a petition. Indeed, under the statutory scheme, it is the regional directors, on behalf of the General Counsel, who make the initial determination as to the merits of *all* unfair labor practice charges. And of course, as the December 2014 Board noted (79 FR 74334), the courts have recognized that regional directors have expertise in deciding what constitutes objectionable conduct—*i.e.,* conduct that would interfere with employee free choice in an election. See, *e.g., NLRB* v. *Chicago Tribune Co.,* 943 F.2d 791, 794 (7th Cir. 1991), cert. denied, 504 U.S. 955 (1992).

The District of Columbia Circuit's decision in *Allied Mechanical Services, Inc.* v. *NLRB,* supra, 668 F.3d at 761, 771, 773, provides further support for the notion that the April 2020 Board's distrust of regional directors' administrative determinations is not well founded. There, the court rejected claims that an administrative settlement of a *Gissel* complaint—that is, a settlement agreement approved by a regional director requiring the company to bargain with the union as the unit's exclusive representative—was insufficient to demonstrate that a union had Section 9(a) status. Id. at 770–771. In doing so, the court relied on a longstanding presumption that the actions of administrative officials are fair and regular. Id. (citing cases). The court thus reasoned:

> It is therefore unlikely—and even illogical—to suppose that the Board's General Counsel would have asserted that a majority of [the Company's] unit employees had designated the Union as their representative through authorization cards, and that a *Gissel* bargaining order was necessary to remedy the Company's unfair labor practices, without first investigating the Union's claim of majority status and satisfying itself that a *Gissel* bargaining order was appropriate.

Id. at 771.[118]

Moreover, as then-Member McFerran pointed out in her dissent to the 2019 NPRM, this criticism ignores that regional directors and the General Counsel make all sorts of administrative determinations that impact the ability of employees to obtain an election or to retain union representation. 84 FR 39944. For example, employees, unions, and employers are denied an election if the regional director makes an administrative determination that the petitioner lacks an adequate showing of interest. See 79 FR 74391, 74421 (the adequacy of the showing of interest is a matter for administrative determination and is nonlitigable). Regional directors may also deny employer and union requests for second elections based on an administrative determination that no misconduct occurred or that any misconduct that occurred did not interfere with employee free choice. See 79 FR 74412, 74416 (parties have no entitlement to a post-election hearing on election objections or determinative challenges, and regional directors have discretion to dispose of such matters administratively). Indeed, the April 2020 Board's skepticism toward regional director administrative determinations in this context is in considerable tension with Congress' decision to authorize regional directors to administratively decide when elections should be conducted in the first place and when the results of elections should be certified in Section 3(b) of the Act. See also 79 FR 74332–74334 (observing that Congress expressed confidence in the regional directors' abilities when it enacted Section 3(b)).[119]

[118] Although it opposes returning to the pre-April 2020 blocking charge policy, the NRTWLDF argues that if a decertification election is to be blocked, that block ''should at least be based on a Regional Director's formal merit determination, not mere allegations made by a self-interested union attempting to delay or prevent its potential ouster.'' Our dissenting colleague similarly attempts to minimize the role of the offer-of-proof requirement, arguing that ''the reliance on offers of proof and witness availability requirements alone are insufficient to curb known union abuse of blocking charges.'' Of course, these arguments ignore that a petition is not blocked based on ''mere allegations'' of unlawful conduct. Rather, as shown, under the pre-April 2020 blocking charge policy to which we return, a request to block based on an unfair labor practice charge must be supported by an adequate offer of proof, filed simultaneously with the blocking request, providing the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. 29 CFR 103.20 (Dec. 15, 2014). Moreover, the policy to which we return specifies that the regional director should continue to process the petition and conduct the election where appropriate—notwithstanding the blocking request—if the director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances. 29 CFR 103.20 (Dec. 15, 2014). We expect regional directors to adhere to these requirements. In other words, an offer of proof is insufficient if, for example, it merely states in conclusory fashion that a named witness will testify about alleged but unspecified unlawful employer assistance to the decertification petitioner; specifics regarding the assistance must be provided in the offer of proof. In any event, we decline the suggestion of the commenter and our dissenting colleague that we should deprive regional directors of the authority to delay elections based on unfair labor practice charges supported by adequate offers of proof unless the regional director has made a formal merit determination. Although there is no prehearing discovery in unfair labor practice proceedings, regional investigations of unfair labor practice charges are not perfunctory affairs; they involve several steps, including the taking of affidavits of the charging party's witnesses, attempts to obtain corroborating evidence, the solicitation of the position of the alleged wrongdoer, including obtaining affidavits from the charged party's witnesses if the charged party agrees to make its witnesses available in a timely manner, and legal research. See, *e.g.,* NLRB Casehandling Manual (Part 1) Unfair Labor Practice Proceedings, Sections 10052.3, 10052.5, 10052.8, 10054.2, 10054.3, 10054.4, 10054.8, 10058.2, 10060, 10064 (February 2023); NLRB, FY 2022 Performance and Accountability Report 26, available at *https://www.nlrb.gov/reports/agency-performance/performance-and-accountability* (last visited September 28, 2023) (noting that in FY 2022 only 41.2 percent of unfair labor practice charges were found to have merit by the regional directors). Thus, it obviously takes some time before a regional director can make a formal merit determination regarding an unfair labor practice charge. In FY 2022, the average time between charge filing and regional disposition was 84.4 days. See GC MEMORANDUM 23–06, p. 2, available at *https://www.nlrb.gov/guidance/memos-research/general-counsel-memos.* We believe that where parties have filed sufficient offers of proof in support of their blocking requests and no exceptions are applicable, regional directors should have the authority to delay elections, notwithstanding they have not had sufficient time to make formal merit determinations. Adoption of the commenter's suggestion would require regional directors to conduct elections in circumstances where conduct has occurred that has a tendency to interfere with employee free choice, or which is inherently inconsistent with the petition itself, simply because the regional director was not yet able to make the requisite merit determination. This would undermine employee free choice and contravene the Board's duty to conduct elections under conditions as nearly ideal as possible.

[119] Nor did the April 2020 amendments do away with the Board's longstanding practice of permitting regional directors to set aside elections based on their administrative approval of an informal settlement agreement providing for a rerun election (but containing a nonadmissions clause), even though there has been no posthearing finding by the Board of merit to the charge.

Continued

Our dissenting colleague and some commenters [120] also invoke the April 2020 Board's complaint (85 FR 18367, 18379, 18393) that regional directors had not applied the blocking charge policy consistently. However, after reviewing the comments and the April 2020 rule, we do not find that justification persuasive. The April 2020 rule did not offer any specific evidence demonstrating any significant differences in how regions were actually applying the blocking charge policy as it existed at the time. Nor do the commenters. In any event, because parties were entitled to file requests for Board review of regional director decisions to block elections based on either Type I or Type II charges when the pre-April 2020 blocking charge policy was in effect, we believe that the Board has the ability to correct any erroneous blocking determinations made by regional directors. See 29 CFR 102.71(b) (2011); Casehandling Manual Sections 11730.7, 11733.2(b) (January 2017). Accordingly, we do not believe that a return to the blocking charge policy as it existed prior to the April 2020 rule will create a widespread problem where petitions that would normally be blocked in some regions would normally be processed to election in other regions.

d. Comments That the Pre-April 2020 Blocking Charge Policy Deprives Employees of the Ability To Vote and Renders Illusory RM Petitions; That This Rulemaking Is Intended To Protect the Institutional Interests of Labor Organizations Rather Than Employee Free Choice; and That the Pre-April 2020 Blocking Charge Policy Punishes Employees for the Misconduct of Others

We also reject the premise of many commenters, our dissenting colleague, and the April 2020 Board that the April 2020 rule's amendment requiring elections to be held in virtually all cases involving requests to block is necessary to preserve employee free choice in those cases where petitions would have been blocked by nonmeritorious charges under the pre-April 2020 blocking charge policy. While we recognize that the pre-April 2020 blocking charge policy can delay elections pending the investigation of the merits of the blocking charges, we believe that the benefits of permitting regional directors to block elections—where they are presented with blocking requests that are supported by adequate offers of proof and where they conclude that no exceptions are applicable—outweigh any such delay. In our considered policy judgment, the Board's blocking charge policy as it existed prior to the effective date of the April 2020 rule best preserves employee free choice in representation cases. We note that because the historical blocking charge policy provided for the regional director to resume processing the representation petition to an election if the blocking charge was found to lack merit, employees in those cases would be afforded the opportunity to vote whether they wish to be represented, thus preserving employee free choice.[121] However, unlike the April 2020 rule, the Board's historical blocking charge policy also protects employee free choice in cases involving *meritorious* charges by suspending the processing of the election petition until the unfair labor practices are remedied. By shielding employees from having to vote under coercive conditions, the historical blocking charge policy strikes us as more compatible with the policies of the Act and the Board's responsibility to provide laboratory conditions for ascertaining employee choice during Board-conducted elections. In short, it is the Board's historical blocking charge policy to which we return, not the April 2020 rule requiring elections in virtually all cases involving requests to block, that best protects employee free choice in the election process.[122]

We reject as simply incorrect the suggestion of some commenters [123] and the April 2020 Board (85 FR 18366–18367, 18377) that the Board's historical blocking charge policy can prevent employees from *ever* obtaining an election if they continue to desire an election after the merits of the charge are determined. As shown, if the petition was held in abeyance because of a Type I charge, the regional director resumed processing the petition once the charge was ultimately found to lack merit or the unfair labor practice conduct was remedied. Casehandling Manual Sections 11732; 11733.1; 11734 (August 2007). If, on the other hand, the petition was dismissed because of a Type II charge, it was subject to reinstatement if the charge was found nonmeritorious. Id., Sections 11732; 11733.2. Moreover, as noted below, even if the petition was dismissed because of a meritorious Type II blocking charge, employees could, if they so choose, file a new petition after the unfair labor practice conduct that caused the petition to be dismissed was remedied.

We find unpersuasive the suggestion of some commenters and the April 2020 Board [124] that the desires of the unit employes to decertify a union can be thwarted because, during the time it takes to litigate the merits of the unfair labor practice charge that resulted in the representation petition being held in abeyance or being dismissed, the decertification petitioner may leave the unit or become so discouraged by the delay that they give up and request to withdraw the petition. The commenters and the April 2020 Board simply ignore that if the decertification petitioner

And despite criticizing the pre-April 2020 blocking charge policy for permitting a mere administrative determination to delay employees' ability to go to the polls to resolve their representational status, the April 2020 Board did not explain why it left unchanged Board law permitting an employer to withdraw recognition from an incumbent union that had won a Board-conducted election based merely on the General Counsel's administrative determination that a majority of the unit no longer desire union representation. And that administrative determination—unlike the administrative determination to hold a petition in abeyance under the blocking charge policy—is not even reviewable by the Board, because the General Counsel has unreviewable discretion to decline to issue a complaint challenging an employer's unilateral withdrawal of recognition from an incumbent union. See *NLRB* v. *United Food & Commercial Workers Union, Local 23, AFL–CIO,* 484 U.S 112, 118–119 (1987) (a charging party may appeal a regional director's dismissal of an unfair labor practice charge to the General Counsel, but not to the Board); *Williams* v. *NLRB,* 105 F.3d 787, 790–791 fn. 3 (2d Cir. 1996) (''`General Counsel's prosecutorial decisions are not subject to review by the Board,'" and courts may not pass judgment on the merits of a matter never put in issue or passed upon by the Board) (citation omitted).

[120] See, *e.g.,* comments of CDW; HRPA.

[121] As discussed more below, Sec. 103.20(f) and (g) of the final rule aims to provide guidance regarding the circumstances under which it will be appropriate for a regional director to resume processing a petition.

[122] Scaccia appears to suggest that that the Board should outline a specific time frame for elections similar to the regular election cycles in the political arena. However, the Board has no authority to conduct an election in the absence of an appropriately filed petition raising a question of representation. See Sec. 9(c) of the Act (29 U.S.C. 159(c)). Moreover, during the Act's long history, neither Congress nor the Board has seen fit to impose a mandatory timeline for the scheduling of elections. We agree with the views of the December 2014 Board that regional directors should continue to hold elections as soon as practicable in the circumstances of each case. Thus, ''[w]here there is no need to wait, the election should proceed; where there is a need to wait, the election should not proceed.'' 79 FR 74422, 74429. Suffice it to say that for the reasons explained at length in this preamble, we believe there is a need to wait when adequately supported blocking charge requests are filed and no exceptions are applicable.

[123] See, *e.g.,* comments of HRPA; NRTWLDF.

[124] See 85 FR 18366–18367, 18377; comments of CDW; HRPA; NRTWLDF.

ceases to be employed in the unit, the Board will continue to process the petition upon the request of the employees who remain in the unit. See *Northwestern Photo Engraving Co.,* 106 NLRB 1067, 1067 fn. 1 (1953) (denying union's request that decertification petition be dismissed because of death of decertification petitioner where unit employees requested that Board proceed with the processing of the petition). Cf. *Tyson Fresh Meats, Inc.,* 343 NLRB 1335, 1335 & fn. 3 (2004) (rejecting argument that employer's objections to a decertification election won by the union should be dismissed because decertification petitioner was promoted out of the unit to a supervisory position after filing the petition because where a petitioner becomes a supervisor after the filing of a petition, the process is not abated, as the petitioner is only a representative of the employees who are interested in a vote on continuing representation) (internal quotation marks omitted); *Weyerhaeuser Timber Co.,* 93 NLRB 842, 843–844 (1951) (denying the union's request to dismiss the decertification petition on the ground that the petitioner was promoted to supervisory position because ''[t]he employees of the Employer, who are currently being represented by the Union, are principally involved rather than the Petitioner. To dismiss the petition herein would be to their prejudice, not the Petitioner.''). Indeed, HRPA's comment cites a recent case where another employee was substituted for the original decertification petitioner who had left the unit. See *Geodis Logistics, LLC,* 371 NLRB No. 102, slip op. at 1 fn. 1 (2022) (Board grants motion to substitute a different individual as the petitioner in the decertification cases after original decertification petitioner left the unit). Similarly, if the other unit employees who supported the decertification petition object to a decertification petitioner's request to withdraw the petition, the Board rejects the withdrawal request and continues processing the decertification petition. See *Saginaw Hardware Co.,* 108 NLRB 955, 957 (1954) (rejecting decertification petitioner's request to withdraw petition where other unit employees objected and had not authorized the petitioner to withdraw the decertification petition). And it goes without saying that another employee is free to file a new petition. This was the law that was in effect prior to the April 2020 rule, and it remains the law after the effective date of the instant rule.[125]

Accordingly, we also categorically deny the suggestion of some commenters[126] that the proposal to return to the pre-April 2020 blocking charge policy demonstrates that the Board is uninterested in protecting the rights of employees who wish to rid themselves of their collective-bargaining representatives, and that our desire to conduct free and fair elections is illusory. We likewise disagree with the contention made by many commenters that the blocking charge policy wrongfully punishes employees for the misconduct of their employers.[127] Put simply, as we have explained at length, the blocking charge policy is designed to protect employees' right to exercise a free and untrammeled choice for or against union representation.

e. Comments Regarding the Possibility of Employee Turnover Pending the Investigation of The Merits of the Blocking Charge

Our dissenting colleague, CDW, and the April 2020 Board (85 FR 18367, 18378, 18393) also fault the pre-April 2020 blocking charge policy because a possible result of delaying elections is that employees who were in the workforce when the petition was filed might not be in the workforce when the election is ultimately held following disposition of the blocking charge, thereby disenfranchising those employees. We do not find this argument a persuasive reason to adhere to the April 2020 rule. Unless the Board were to conduct elections the day the election petition is filed, the possibility of employee turnover is unavoidable. Indeed, even in the absence of any unfair labor practice charges being filed prior to the election, those eligible to vote are *not* those employed in the unit at the time the petition is filed. Rather, the employees who are eligible to vote in the election are those employees who were employed during the payroll period for eligibility and who remain employed as of the election. In directed election cases, this means that only employees employed in the unit during the payroll period immediately preceding the date the decision and direction issues—and who remain employed as of the election—are eligible. Casehandling Manual Section 11312.1 (August 2007); Casehandling Manual Section 11312.1 (September 2020). In the stipulated election context, the payroll period for eligibility is normally the last payroll period ending before the regional director's approval of the agreement. Casehandling Manual Sections 11086.3; 11312.1 (August 2007); Casehandling Manual Sections 11086.3; 11312.1 (September 2020).

In our considered policy judgment, it serves no valid purpose to conduct elections over the objections of charging parties in the face of unremedied unfair labor practices that interfere with employee free choice, even though delaying the election until the unfair labor practices are remedied might mean that some employees who were in the workforce at the time the petition was filed are no longer employed at the time the election is held. As for the subset of cases where the charges are nonmeritorious, we do not believe that it is unjust to bar employees from voting who were employed at the time of the

[125] And, as the courts had recognized, even if the petition was dismissed because of a meritorious Type II blocking charge, employees could, if they so choose, file a new petition after the unfair labor practice conduct that caused the petition to be dismissed is remedied. See *Bishop,* 502 F.2d at 1028–1029 (''If the employees' dissatisfaction with the certified union should continue even after the union has had an opportunity to operate free from the employer's unfair labor practices, the employees may at that later date submit another decertification petition.''); see also *Albertson's Inc.* v. *NLRB,* 161 F.3d 1231, 1239 (10th Cir. 1998) (''[A]ny harm to employees seeking decertification resulting from the blocking of the petition is slight in that employees are free to file a new petition so long as it is circulated and signed in an environment free of unfair labor practices.''). To be sure, as the April 2020 Board noted, 85 FR 18377, a blocked decertification petition may never proceed to an election if the incumbent union disclaims interest in representing the unit. However, there plainly is no need to hold a decertification election to afford employees the opportunity to oust the incumbent union if that union has voluntarily disclaimed interest.

We also disagree with the April 2020 Board's claim (85 FR 18367, 18379), echoed by our dissenting colleague, along with commenters such as CDW, that the pre-April 2020 blocking charge policy renders illusory the possibility of employer-filed (''RM'') election petitions. Under that policy, which we reaffirm and codify in Sec. 103.20(f) and (g) of the final rule we promulgate, if an RM petition is blocked, the regional director resumes processing it once the unfair labor practice charges are remedied or the charges are determined to lack merit. Moreover, as noted, then-Member McFerran's analysis of the relevant data indicated that the overwhelming majority of RM petitions were never blocked, and that even in the minority of instances when RM petitions are blocked, most of these petitions are blocked by meritorious charges.

[126] See, *e.g.,* comments of Chairwoman Foxx; Chamber; HRPA; NRTWLDF; ''Interested Party.''

[127] See, *e.g.,* comments of ABC; NRTWLDF; Anonymous 143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Paul Andrews; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; R.E. Fox; John Gaither; Allan Gardiner; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

petition filing, but who are no longer employed when the regional director resumes processing the petition. As noted, the same rule applies in cases where no unfair labor practice charges are ever filed. And this is true equally in the decertification context and in the context of initial organizing campaigns. Thus, employees who were employed as of the filing of the petition, but who are no longer employed as of the time of the election, are not eligible to vote. Certainly, there is nothing in the blocking charge policy that compels any employee to leave their place of employment during the period when the petition is held in abeyance pending a determination of the merits of the charge.

We also find it significant that the April 2020 rule did not eliminate the risk that employees who end up voting in a valid election (*i.e.,* an election whose results are certified) will not be those who were employed at the time of the petition filing. The April 2020 rule recognized that the Board should set aside the initial election and, in certain circumstances, conduct a rerun election in cases where the charges that were the subject of a request to block are meritorious. And just as was the case prior to the April 2020 rule, the eligibility period for rerun elections under the April 2020 rule is the payroll period preceding the date of issuance of the notice of rerun election, not the payroll period preceding the date of the original decision and direction of election (or approval of the stipulated election agreement), and certainly not the date of the petition filing. See Casehandling Manual Sections 11436, 11452.2 (August 2007); Casehandling Manual Sections 11436, 11452.2 (September 2020). Put simply, this means that, under the April 2020 rule, employees who vote in the election that counts—*i.e.,* the election whose results are certified—sometimes will not be the employees who were in the unit when the petition was filed. Yet, despite its professed concerns about employee turnover, the April 2020 Board was willing to countenance this result; indeed, like so many of the commenters opposed to the NPRM, the April 2020 Board took the position that a rerun election constitutes an adequate remedy notwithstanding the possibility of turnover. Some risk of disenfranchisement is thus unavoidable in this context. However, in our considered policy judgment, the costs of the delay (including the risk that employees who voluntarily choose to leave the unit while the merits of the unfair labor practice charge are determined will not have the opportunity to vote in an eventual election) do not outweigh the benefits of enabling regional directors to avoid having to force employees to vote under coercive circumstances when there are concurrent charges supported by an adequate offer of proof and a request to block.

f. Comments Regarding Section 8(a)(2), the First Amendment, Compulsory Dues Obligations Following Expiration of Collective-Bargaining Agreements, and the Alleged Statutory Right to a Decertification Election 12 Months After a Prior NLRB-Supervised Election

Nor do we agree with those commenters that argue that we should adhere to the April 2020 rule because it better accords with the considerations underlying Section 8(a)(2) of the Act than the pre-April 2020 blocking charge policy.[128] According to CDW, because the blocking charge policy delays decertification elections for the duration of the ''administrative processes'' (including the investigation into the merits of the concurrent unfair labor practice charge(s)), it ''runs directly counter to the policy considerations underlying Section 8(a)(2)'s prohibition on recognition of minority unions'' because the lawfully recognized union ''may have long since lost the support of a majority of employees.'' [129]

However, these comments ignore that the blocking charge policy applies equally to petitions filed in initial organizing campaigns, where, by definition, there is *no* incumbent union serving as the representative of the unit employees. Thus, the commenters' concerns about the blocking charge policy insulating an entrenched minority union from being ousted in the decertification context cannot justify denying regional directors the ability to delay elections in the initial organizing context when there are pending unfair labor practice charges and blocking requests alleging conduct that would interfere with employee free choice in an election were one to be held.

Nor do the commenters explain why their concern about the blocking charge policy's effect in the decertification context should prevent a regional director from delaying an election sought by a rival union with whom the employer might prefer to deal (over the incumbent union) and which the employer has unlawfully assisted in obtaining a showing of interest in support of the petition, when the incumbent union has filed a request to block supported by an adequate offer of proof. See CHM Section 11730.3(a) (August 2007) (noting that Section 8(a)(2) charges alleging that employer representatives assisted in the showing of interest obtained by a labor organization may justify dismissal of the petition).

As for the delay that results from application of the blocking charge policy in the context of decertification petitions where there admittedly is a currently certified (or voluntarily recognized) representative, we note that, by definition, the incumbent union would not have been certified by the Board (or recognized by the employer) prior to the filing of the decertification petition unless the union had previously won a Board-conducted election (or the employer had satisfied itself that the union enjoyed majority support when it recognized the union). We further note that because a decertification petition need only be supported by 30 percent of the unit, the mere filing of a decertification petition does not by itself demonstrate that the incumbent union lacks majority support. See *Allied Industrial Workers, AFL–CIO Local Union 289* v. *NLRB,* 476 F.2d 868, 881 (D.C. Cir. 1973) (''The naked showing that a decertification petition has been filed, with no indication of the number of signatories . . . , is an insufficient basis'' for doubting the union's majority status ''since it establishes no more than that the petition was supported by the requisite 30% 'showing of interest.' '') (citation omitted); *Bryan Memorial Hospital* v. *NLRB,* 814 F.2d 1259, 1262 (8th Cir. 1987). The commenters do not explain how requiring employees to await the outcome of the investigation into the merits of an unfair labor practice charge alleging conduct that would interfere with employee free choice or which is inconsistent with the petition itself runs afoul of Section 8(a)(2) where there has not even been a purported showing that the incumbent union in fact has lost its majority support. Moreover, even if the decertification petition purportedly was signed by a majority of the unit employees, the petition itself may have been tainted by unfair labor practices, thereby casting doubt on whether the petition demonstrates the uncoerced sentiments of a majority of the unit employees. And the results of the decertification election cannot be said to

[128] See, *e.g.,* comments of CDW; NRTWLDF.

[129] See *Bernhard-Altmann,* supra, 366 U.S. at 738 (''[A] grant of exclusive recognition to a minority union constitutes unlawful support in violation of . . . [S]ec[.] [8(a)(2)], because the union so favored is given 'a marked advantage over any other in securing the adherence of employees.' '') (quoting *Pennsylvania Greyhound Lines,* 303 U.S. at 267).

represent the uncoerced views of a majority if the election was conducted under coercive circumstances that postdate the showing of interest. As for decertification elections delayed by nonmeritorious charges, we repeat that the regional director resumes processing the petition if the charge lacks merit. In short, we see no fundamental inconsistency between the blocking charge policy and Section 8(a)(2); both advance the goals of protecting employee free choice in the selection and retention of collective-bargaining representatives and shielding the employees' choice from unlawful interference by the employer.

Finally, as several commenters that support the proposed rule note,[130] even though the April 2020 rule permits employees to vote sooner, the employees' choice is not necessarily effectuated any sooner—in the sense of the incumbent union actually being decertified—because the certification of the results of the election must await the determination of the merits of the unfair labor practice charge, and it takes the same amount of time to investigate the charge whether it is investigated before the election (under the pre-April 2020 policy to which we return) or after the election (as under the April 2020 rule). For all these reasons, we do not believe that we should decline to return to the blocking charge policy on Section 8(a)(2) policy grounds.

Insofar as certain commenters raise First Amendment concerns about the blocking charge policy delaying employees' ability to oust a union because they would prefer not to be union members,[131] we note that under the Act, employees need not join a union or remain members of a union and may resign their union membership at any time.[132] Even assuming for the sake of argument that the First Amendment applies at all to private-sector agency-shop arrangements, the commenters cite no authority for the proposition that the First Amendment is violated if an election is delayed during the investigation of unfair labor practice charges alleging conduct that would interfere with employee free choice or that is inconsistent with the petition itself.[133]

Nor are we persuaded by the comments that argue that we should refrain from returning to the Board's historical blocking charge policy because that policy punishes employees by forcing them to pay dues to the union they wish to decertify after the collective-bargaining agreement containing the union-security clause expires.[134] Thus, even in a state where union-security clauses are lawful, once the collective-bargaining agreement containing the union-security clause has expired, nonmember employees who do not wish to financially support the incumbent union can avoid having to pay any dues to the incumbent union simply by revoking their dues-checkoff authorizations pursuant to Section 302(c)(4) of the Taft-Hartley Act. After all, ''[u]nion-security clauses do not survive contract expiration because the proviso to Section 8(a)(3) of the Act limits such provisions to the term of the contracts containing them,'' and even if employees have voluntarily authorized dues checkoff, their authorizations ''are revocable at the employee's option'' after contract expiration, consistent with the terms of such authorizations. *Valley Hospital II,* 371 NLRB No. 160, slip op. at 9 fn. 23 & 10 fn. 31.[135]

Many commenters opposed to the proposed rule argue that the pre-April 2020 blocking charge policy infringes on workers' ''statutory right to hold decertification elections at any time outside of 12 months following a previous NLRB-supervised election.'' [136] We disagree. Those comments cite no authority for such a supposed statutory right, and the courts have repeatedly upheld Board doctrines that can prevent the holding of decertification elections or the withdrawal of recognition more than 12 months after a valid NLRB-supervised election. See, *e.g., Auciello Iron Works, Inc.,* supra, 517 U.S. at 786–787 (union is entitled to a conclusive presumption of majority status during the term of a collective-bargaining agreement of three years or less). See also *Veritas Health Services, Inc.* v. *NLRB,* supra, 895 F.3d at 80–82 (''[T]here are certain times when a union's presumption of majority

[130] See comments of AFL–CIO/NABTU; GC Reply; LA Federation; USW.

[131] See, *e.g.,* comments of Weber, Scaccia, and Chaump. We note in passing that certain commenters, such as Scaccia, a New York State employee, and Chaump, a public school teacher in Pennsylvania, will not be directly affected by the instant rule because the Board lacks jurisdiction over public employees. 29 U.S.C. 152(2).

[132] See *Pattern Makers' League of North America, AFL–CIO* v. *NLRB,* 473 U.S. 95, 99–108 (1985) (employees may resign membership in a union at any time); *NLRB* v. *General Motors Corp.,* 373 U.S. 734, 742 (1963) (''`Membership' as a condition of employment is whittled down to its financial core.''). Except in States where union-security clauses are prohibited by state law, as Sec. 14(b) of the Act authorizes, however, nonmember employees may be subject to the requirements of such clauses. See, *e.g., Marquez* v. *Screen Actors Guild, Inc.,* 525 U.S. 33, 36–37, 46 (1998) (Sec. 8(a)(3) of the Act ''incorporates an employee's right not to `join' the union (except by paying fees and dues) for ''representational activities'').

[133] See *Blanco,* 641 F. Supp. at 419 (rejecting the contention that application of the historical blocking charge policy deprived the plaintiff of his First Amendment rights).

[134] See, *e.g.,* comments of Chairwoman Foxx; Chamber; NRTWLDF; Scaccia. At least one commenter relies on the Board's decision in *WKYC–TV, Inc.,* 359 NLRB No. 30 (2012), in support of her claim regarding compulsory dues payments following expiration of a collective-bargaining agreement containing a dues-checkoff obligation. At the time that case was decided, the composition of the Board included two persons whose appointments were subsequently held to be constitutionally invalid in *NLRB* v. *Noel Canning,* 537 U.S. 513 (2014). In *Lincoln Lutheran of Racine,* 362 NLRB 1655 (2015), decided thereafter by a valid Board majority, the Board held that an employer's obligation to check off union dues continues after expiration of a collective-bargaining agreement that contains a dues-checkoff provision. In *Valley Hospital Medical Center, Inc.,* 368 NLRB No. 139, slip. op. at 1 (2019) (''*Valley Hospital I*''), the Board overruled *Lincoln Lutheran of Racine,* but, following a remand from the United States Court of Appeals for the Ninth Circuit, the Board reversed *Valley Hospital I* and ''reinstate[d]'' *Lincoln Lutheran's* holding. See *Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center,* 371 NLRB No. 160, slip op. at 1–3 & fn. 1 (2022) (''*Valley Hospital II*''), enfd. 93 F.4th 1120 (9th Cir. 2024). *Valley Hospital II* found *Lincoln Lutheran's* decision ''thoughtful and well reasoned,'' and adopted its reasoning. Id. slip op. at 1–2, 9. Accordingly, our discussion of this issue will reference *Valley Hospital II,* rather than *WKYC–TV,* as cited in the comment.

[135] We likewise reject as lacking in merit commenter Chaump's unexplained claim that the proposed return to the blocking charge policy would ''stifle competition in labor relations by forcing union representation onto all employees, without the employees having the chance to vote for representation in the first place.'' As discussed above, federal labor law has long recognized, even prior to the adoption of the blocking charge policy, that employees may obtain representation for purposes of collective bargaining without first voting in a Board-conducted election. We further note, as was also discussed previously, that the Supreme Court has held that the Board has the authority to order an employer to bargain with a union when the employer has committed serious unfair labor practice conduct disruptive of the election machinery and where the Board concludes that previously expressed employee sentiment would be better protected by a bargaining order. See *Gissel Packing,* 395 U.S. at 591–592, 610–611, 614–615. See also *Cemex,* supra, 372 NLRB No. 130, slip op. at 24 (discussing the Supreme Court's decision in *Gissel*). To the extent Chaump contends that the other rule provisions have that effect, the argument is addressed elsewhere. We likewise reject as lacking in merit Bryden's unexplained claim that limiting voting windows is ''racist.''

[136] See, *e.g.,* comments of Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Paul Andrews; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Marvin Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; William Fedewa; R.E. Fox; John Gaither; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

support is irrebuttable, such that any refusal to recognize and deal with a duly elected union—with or without a decertification petition—will violate the Act.''); *Bryant & Stratton Business Institute, Inc.* v. *NLRB,* 140 F.3d 169, 174, 186–187 (2d Cir. 1998) (upholding Board's finding that employer's April 1996 withdrawal of recognition was unlawful because employer withdrew recognition prior to the expiration of the extension of the certification year that the Board ordered to remedy employer's bargaining violations during the 12-month period following the union's November 1989 certification); *NLRB* v. *Commerce Co.,* 328 F.2d 600, 601 (5th Cir. 1964) (''[I]n view of the undisputed evidence as to earlier failure to bargain, we think the board's action, in making the order dismissing the decertification petition and granting the union an additional six months beyond the certification year in which to bargain, was reasonable and proper.''), cert. denied. 379 U.S. 817 (1964). Cf. *Mar-Jac Poultry Co., Inc.,* 136 NLRB 785, 787 (1962) (dismissing election petition filed by employer more than 12 months after the union was certified but before the employer had bargained for 12 months; ''to permit the Employer now to obtain an election would be to allow it to take advantage of its own failure to carry out its statutory [bargaining] obligation, contrary to the very reasons for the establishment of the rule that a certification requires bargaining for at least 1 year.''); *Lamar Hotel,* 137 NLRB 1271, 1271–1273 (1962) (dismissing decertification petition filed more than 12 months after union's certification because the employer had ceased bargaining for approximately the last six months of that 12-month period). It is thus not surprising that no court had ever invalidated the blocking charge policy in the more than eight decades of its existence, and that even the 2020 Board did not claim that the blocking charge policy violated the Act. Moreover, as previously discussed, even under the April 2020 rule, regional directors were empowered to dismiss petitions—and thereby block elections—more than 12 months after a previous election under the merit-determination dismissal procedure.[137]

[137] For related reasons, we also reject the suggestion of the NRTWLDF that if the Board decides to reinstate the pre-April 2020 blocking charge policy, we should include a provision allowing decertification petitioners to intervene as full parties in all blocking charge litigation to protect and effectuate their statutory right to an election. See comments of NRTWLDF.

''Sec. 10(b) of the Act expressly provides that intervention in unfair labor practice proceedings is discretionary with the Board, and not a matter of right.'' *DirectSat USA, LLC,* 366 NLRB No. 141, slip op. at 2 (2018) (citing *Medi-Center of America,* 301 NLRB 680, 680 fn. 1 (1991)), review denied, 925 F.3d 1272 (D.C. Cir. 2019). Thus, Sec. 10(b) of the Act provides, ''[i]n the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony.''). The Board's Rules and Regulations likewise make intervention discretionary and not a matter of right. See 29 CFR 102.29 (''Any person desiring to intervene in any proceeding must file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest . . . . The Regional Director or the Administrative Law Judge, as the case may be, may, by order, permit intervention in person, or by counsel or other representative, to such extent and upon such terms as may be deemed proper.''). Moreover, as a case cited by the commenter implicitly recognizes, in some cases, a decertification petitioner has no right to an election when it files the decertification petition and can have nothing relevant to contribute to an unfair labor practice proceeding because its petition is legally foreclosed. See *Veritas Health Services, Inc.,* supra, 895 F.3d at 87 (even assuming a decertification petition was signed by a majority of the unit employees, any loss of majority support for the Union would not have been actionable during the still-pending extended certification year); id. at 89 (concurring opinion) (while urging the Board to establish substantive criteria governing intervention, concurring opinion notes that the Board's failure to do so is ultimately without consequence in this particular case because [the employee's] claims on intervention pertain to a legally foreclosed decertification petition). Allowing decertification petitioners to intervene in such cases, with all the rights that such participation extends, can only serve to hinder and delay the prompt decision of the controversy. The commenter also implicitly concedes that in other cases, the decertification petitioner's interests sometimes will be adequately represented by the employer. See comments of NRTWLDF (contending that it ''is not always the case'' that the employer has the same interest as the petitioner'' in the representation case) (emphasis added). Cf. *Semi-Steel Casting Co. of St. Louis* v. *NLRB,* 160 F.2d 388, 393 (8th Cir. 1947) (''Insofar as intervention was sought by the employees for the purpose of making the same defense as that made by the company, they were not only not necessary parties, but their presence could only serve to hinder and delay the prompt decision of the controversy.''). Accordingly, we decline to grant decertification petitioners a categorical entitlement to intervene as full parties in all blocking charge litigation. Rather, consistent with the statute and the extant regulations, motions to intervene made by decertification petitioners should be decided on a case-by-case basis.

The NRTWLDF also asserts that the Board has held that decertification petitioners are not entitled to even get information regarding the blocking charge litigation. We are unaware of any Board holding precluding Agency personnel from responding to requests for nonprivileged information about the status of pending unfair labor practice charges. We expect regional offices to disclose publicly available information in response to requests by decertification petitioners about the status of blocking charges just as they would respond to inquiries about the status of other charges.

g. Comments That the Pre-April 2020 Blocking Charge Policy Incentivizes the Filing of Meritless or Frivolous Charges

Many commenters who oppose the NPRM argue that because the blocking charge policy can substantially delay elections based on mere allegations of unfair labor practices, the policy incentivizes the filing of meritless or frivolous charges, particularly in the decertification context where employees are seeking to rid themselves of union representation.[138] The April 2020 Board made the same argument to justify its decision to jettison the blocking charge policy. 85 FR 18367, 18376, 18377, 18379–18380, 18393. Our dissenting colleague also defends the April 2020 rule on this basis, arguing that the majority ''largely downplays and dismisses the gamesmanship problem.''

That argument, unsupported by evidence, does not persuade us that we should decline to return to the pre-April 2020 blocking charge policy. Put simply, there has been no factual demonstration that it was the norm for unions to file nonmeritorious blocking charges—let alone to file frivolous charges—in order to delay elections in RD or RM cases when the historical blocking charge policy was in effect. Indeed, as then-Member McFerran pointed out in her 2019 NPRM dissent, the Board's 2019 NPRM made no effort to determine how often decertification petitions were blocked by meritorious charges, as compared to nonmeritorious charges (which still may well have been filed in good faith, and not for purposes of obstruction). 84 FR 39943. Nor did the Board do so when it issued the April 2020 rule. And nor do the commenters or our dissenting colleague who oppose returning to the pre-April 2020 blocking charge policy. As noted, the analysis of the pre-Covid data contained in then-Member McFerran's 2019 NPRM dissent would seem to undercut the unsupported concerns of many of the commenters, our colleague, and the April 2020 Board, as it shows that an overwhelming majority of the decertification petitions and employer-filed RM petitions were never blocked, and that even in the minority of instances when decertification petitions and RM petitions were blocked, most of these petitions were blocked by meritorious charges.[139] Even if we were

[138] See, *e.g.,* comments of ABC, CDW; Chairwoman Foxx; Chamber; Graham; HRPA; NRTWLDF; Scaccia.

[139] See 84 FR 39943–39945 and Dissent Appendix (''Approximately 80 percent of the decertification petitions filed in FY 2016 and FY 2017 were not impacted by the blocking charge policy because only about 20 percent (131 out of 641) of the decertification petitions filed in FY 2016 and FY 2017 were blocked as a result of the policy.''); Dissent Appendix, Section 1.'' 84 FR 39943–39944 & fn. 64 (''[e]ven in the minority of instances when decertification petitions are blocked, most of these petitions are blocked by meritorious charges. Approximately 66% (86 out of 131) of the decertification petitions that were blocked in FY 2016 and FY 2017 were blocked by meritorious charges. See Dissent Appendix, Section 1.''); 84 FR 39945 fn. 69 (''my review of the relevant data

to accept the 2019 NPRM majority's flawed data as accurate, it too confirms that the majority of petitions were not blocked. See 2019 NPRM Majority Appendix A, currently available at *https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-7583/majority-appendix-reformatted.pdf.* Thus, there simply has been no showing that it was the norm for decertification petitions to be blocked when the pre-April 2020 blocking charge policy was in effect, let alone that that it was the norm for the petitions to be blocked by meritless or frivolous charges.[140]

Moreover, we believe that the regulatory provisions included in the December 2014 rule—requiring the party that seeks to block the election to (1) simultaneously file a written offer of proof providing the names of its witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony, and (2) promptly make the witnesses available to the regional director—operate to disincentivize the filing of frivolous charges and provide powerful tools to regional directors to promptly dispose of any nonmeritorious blocking requests that are filed. As a further safeguard, under the 2014 rule, if a regional director determined that a party's offer of proof did not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, the regional director would continue processing the petition and conduct the election where appropriate. See *Associated Builders & Contractors of Texas, Inc.,* supra, 826 F.3d at 228 (citing amended § 103.20's offer of proof requirement (29 CFR 103.20 (Dec. 15, 2014) and concluding that the Board ''considered the delays caused by blocking charges, and modified current policy in accordance with those considerations''). Indeed, the April 2020 Board itself conceded that this new evidentiary requirement would likely facilitate the quick elimination of obviously meritless charges and blocking requests based on them, and thereby permit processing of some petitions with minimal delay. 85 FR 18377.[141]

Ultimately, just as the April 2020 Board decided to substantially eliminate the blocking charge policy based on a policy choice that does not depend on statistical analysis, we have decided to return to the judicially approved, pre-April 2020 blocking charge policy based on a policy choice that the historical blocking charge policy, as amended by the December 2014 rule, better enables the Board to fulfill its function in election proceedings of providing a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of employees.

h. Comments That the April 2020 Rule Has Not Caused a Spike in the Number of Elections Being Set Aside

The NRTWLDF also claims that the number of elections set aside did not significantly increase after promulgation of the April 2020 final rule, thereby demonstrating (in its view) that the historical blocking charge policy served only to incentivize the filing of nonmeritorious unfair labor practice charges. Its premise appears to be that if employees have been forced to vote under coercive conditions under the April 2020 rule, the Board would have ordered rerun elections (or dismissed petitions) in those cases, and, since no commenter cites evidence that the number of rerun elections/dismissed petitions has significantly spiked, this demonstrates that any would-be blocking charges would have been nonmeritorious. Thus, it claims that the April 2020 rule has succeeded in its goal of permitting employees to vote promptly without interfering with the employees' Section 7 rights to make a free choice for or against union representation. The NRTWLDF states in this regard that it is aware of only three instances in the first two years following the April 2020 rule of an election being held without resolving the question of representation. The NRTWLDF argues that in the absence of evidence proving a spike in the number of rerun elections (or dismissed petitions), the Board lacks a reasoned explanation for returning to the historical blocking charge policy that by definition delays elections.

To be sure, the April 2020 rule by design has the effect of fewer blocked elections, thereby enabling employees to vote sooner than they could have under the Board's historical blocking charge policy (though, as the April 2020 Board and the NRTWLDF concede, the results of those elections cannot be certified until merits of the unfair labor practice charges are determined). However, we are not persuaded by the argument that we should refrain from returning to the pre-April 2020 blocking charge policy in the absence of evidence that the number of elections set aside has significantly increased since the April 2020 rule was implemented in the throes of the Covid 19-pandemic. The commenter ignores that, under the April 2020 rule, elections *are* being set aside because of charges alleging pre-election unfair labor practice conduct, just as the April 2020 Board conceded would be the case. As an initial matter, we disagree with the NRTWLDF's suggestion that there are ''only three instances in two years of an election being held without resolving the question of representation.'' The NRTWLDF's count is admittedly limited to merit-determination dismissal cases. However, as we have previously explained, the merit-determination dismissal procedure, by its own terms, is applicable to only a small subset of representation cases involving concurrent unfair labor practice charges.

The NRTWLDF's figures also fail to take into account cases where the

indicates that approximately 82 percent of the RM petitions filed during FY 2016 and FY 2017 were not blocked, leaving only about 18 percent (18 out of 99) of the RM petitions filed during FY 2016 and FY 2017 as blocked under the policy. . . . And most pointedly, nearly 89 percent (16 out of 18) of the RM petitions blocked during FY 2016 and FY 2017 were blocked by meritorious charges.''). Moreover, the merit rates for blocking charges filed in the RD and RM contexts—66 percent and 89 percent, respectively—were substantially higher than the merit rate for all unfair labor practice charges, which in FYs 2016 and 2017 merely ranged from 37.1% to 38.6%. 84 FR 39944 & fn. 64, 39945 fn. 69 (and materials cited therein). In claiming that then-Member McFerran should not have deemed charges meritorious if they resulted in a settlement, the NRTWLDF ignores that, as shown previously, in determining whether a petition was blocked by a meritorious charge, then-Member McFerran ''applied the Office of the General Counsel's long-standing merit definition contained in OM 02–102'' available at *https://www.nlrb.gov/guidance/memos-research/operations-management-memos,* and that the Board Chairman and General Counsel in office when both the 2019 NPRM and the April 2020 rule issued ''used the *same* merit definition in their Strategic Plan for FY 2019–FY 2022.'' See, *e.g.,* Strategic Plan pp. 2, 5, attached to GC Memorandum 19–02, available at *https://www.nlrb.gov/guidance/memos-research/general-counsel-memos.* 84 FR 39944 fn. 64 (emphasis added).

[140] Our colleague argues that our ''suggestion that there is insufficient evidence that nonmeritorious or frivolous blocking charges are 'the norm'' depends on our willingness to tolerate ''a very substantial burden on employee free choice before even acknowledging, let alone redressing, this harm.'' For the reasons set forth above, we respectfully disagree with our colleague's view that the historical blocking charge policy requires tolerating a ''burden'' on employee free choice. Instead, it is the Board's obligation to minimize the burden on employees of participating in elections conducted under coercive circumstances.

[141] Our dissenting colleague expresses doubt that the offer-of-proof and witness availability requirements will successfully filter out nonmeritorious charges, arguing that those aspects of the pre-April 2020 blocking charge policy are not ''sufficient, standing alone, to curb any abuse of the blocking charge policy.'' Instead, our colleague contends that the Board should have considered ''the use of durational limits for blocking charges'' or other reform alternatives. Because we respectfully disagree with our colleague's assessment of the efficacy of the offer-of-proof and witness availability requirements of the pre-April 2020 blocking charge policy, we do not see a need to explore other reform alternatives. As more extensively discussed above, see supra fn. 119, these requirements are not perfunctory, and we expect regional directors to apply them appropriately when assessing blocking requests.

General Counsel has sought a *Gissel* bargaining order to remedy unlawful conduct adversely affecting an election. See, *e.g., List Industries, Inc.,* Cases 13–CA–278248 et al. & 13–RC–278226; *Spike Enterprise, Inc.,* Cases 14–CA–281652, 13–CA–282513, 13–RC–281169; *I.N.S.A., Inc.,* Cases 01–CA–290558 et al. & 01–RC–288998; *IBN Construction Corp.,* Cases 22–CA–277455, 22–RC–274819; *Starbucks Corp.,* Cases 03–CA–285671 et al. & 03–RC–282127. The NRTWLDF's figures also fail to take into account cases where elections were set aside pursuant to party agreement.[142]

In any event, in focusing on the absence of a spike in the number of elections set aside, we believe that the commenter misses a key point. Put simply, the fact that an election is not set aside does not mean that employees were able to exercise a free and untrammeled choice in the election that was held. The Board generally lacks authority to set aside the results of an election and to conduct a rerun election on its own initiative in a case that does not involve commingled determinative challenges, absent a party's filing election objections (or a request to block).[143] In addition, not all unions will opt to seek a rerun election. In our considered policy judgment, it cannot be counted as a statutory success if a union chooses not to seek a rerun election after being forced to participate in an election conducted under coercive conditions that interfere with employee free choice. Nor do we consider it a statutory success if a union withdraws its petition because it believes that it cannot prevail in an election because of employer unfair labor practices.[144] Accordingly, we are not persuaded that we should refrain from returning to the Board's historical blocking charge policy absent proof of a significant uptick in rerun elections or dismissed petitions following implementation of the April 2020 rule.[145]

[142] See, *e.g., Hussmann Services Corp.,* Cases 27–CA–270714 et al. & 27–RC–271418 (after regional director issued October 13, 2021 order consolidating objections with unfair labor practice complaint, parties settled charges and agreed to set aside election and to a rerun election).

[143] The Board lacks the authority to initiate election objections proceedings on its own. See 29 CFR 102.69(a)(8) (July 21, 2023) (''Within 5 business days after the tally of ballots has been prepared, any party may file with the Regional Director objections to the conduct of the election or to conduct affecting the results of the election. . . .''). Thus, if a party refrains from filing election objections and there are no determinative challenges, the results of the election generally will be certified even if it was conducted under coercive circumstances. See 29 CFR 102.69(b) (July 21, 2023) (''If no objections are filed within the time set forth in paragraph (a)(8) of this section, if the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held pursuant to § 102.70, and if no request for review filed pursuant to § 102.67(c) is pending, the Regional Director shall forthwith issue to the parties a certification of the results of the election, including certification of representative where appropriate, with the same force and effect as if issued by the Board.''). While the April 2020 rule deferred certification of the results of an election in cases where there had been a request to block filed based on a concurrent unfair labor practice charge (see 29 CFR 103.20(d)), there was no provision in that rule for deferring certification in the absence of a request to block (or election objections). Thus, under the April 2020 rule, absent the filing of election objections or a request to block based on unfair labor practice charges, the Board had no authority to set aside the results of an election and to direct a rerun election that did not involve commingled determinative challenges.

[144] In some cases, a union may withdraw its petition even after filing election objections. See, *e.g.,* Opinion Granting Preliminary Injunction in *Goonan* v. *Amerinox Processing, Inc.,* 2021 WL 2948052 (D.N.J. July 14, 2021) (after the Board obtained a court approved formal settlement agreement providing for a rerun election and requiring the employer to cease and desist from its unlawful acts and to pay backpay to a number of discharged employes (who had declined reinstatement), union withdrew its petition in part because of the pandemic and in part ''because the Union believed that employees would be unwilling to vote for the Union at that time due to Amerinox's prior actions.''); *Amerinox Processing, Inc.,* 371 NLRB No. 105, slip op. at 10–12 & fn. 4 (2022), enfd. 2023 WL 2818503 (D.C. Cir. 2023).

SEIU's comment similarly raises *Lockport Rehab & Health Care Center,* Cases 03–RC–267061, 03–RC–267049, and 03–CA–269156, as an example of why a return to the pre-April 2020 blocking charge policy is necessary. SEIU claims that the April 2020 rule forced it to proceed to an election on its petitions, filed October 5, 2020, despite the employer's commission of numerous pre-election unfair labor practices, including two October discharges, threats, and surveillance, causing employees to be terrified of losing their jobs. SEIU claims that the holding of the November 6, 2020 elections ''made a mockery of the Board's responsibility to conduct elections under 'laboratory conditions,' '' and ''ensured that the Lockport election proceeded under coercive circumstances,'' and that it unsurprisingly lost the vote. While the NRTWLDF notes in its reply comment that the SEIU never explicitly states in its comment what happened to its petitions, the SEIU comment indicates that its organizational coordinator did not believe that a rerun election would be a sufficient option because ''[w]orkers lost hope after the election. They walked away with the impression that voting in an NLRB election doesn't mean much and that the employer still really controls the environment no matter what the law says.'' The SEIU comment further indicates that the parties subsequently entered into a non-Board settlement of the unfair labor practice complaint (that issued after the election) providing relief for the discriminatees, and a review of the case file indicates that the Regional Director approved the Union's request to withdraw the petitions based on the non-Board settlement. See March 4, 2021, Complaint And Notice of Hearing in *Lockport Rehab & Health Care Center,* Case No 03–CA–269156; March 5, 2021 Order Directing Hearing On Objections And Order Consolidating Cases and Notice of Hearing in *Lockport Rehab & Health Care Center,* Case Nos. 03–CA–269156, 03–RC–267049, and 03–RC–267061; June 14, 2021 Order Approving Withdrawal of Charge And Petitions And Dismissing The Consolidated Complaint in *Lockport Rehab & Health Care Center,* Case Nos. Case 03–CA–269156, 03–RC–267049, and 03–RC–267061.

[145] For much the same reasons, we reject the related claim of the NRTWLDF that it is the pre-April 2020 blocking charge policy—rather than the April 2020 rule—that imposes unnecessary costs on the Board and the parties by incentivizing the filing of meritless or frivolous charges. To repeat, the commenter has not shown that it was the norm for unions to file meritless or frivolous unfair labor practice charges to delay elections under the pre-April 2020 blocking charge policy or that there have only been three instances of elections not resolving the question of representation during the first two years following the promulgation of the April 2020 rule. The commenter further ignores that the December 2014 rule granted regional directors tools to swiftly dispose of nonmeritorious charges. More fundamentally, the argument ignores that one of the Board's primary functions is to conduct free and fair elections, and that duty is not discharged when, as under the April 2020 rule, the Board is required to conduct some elections under coercive circumstances. The April 2020 rule thus not only imposed unnecessary financial costs on the Board and the parties by admittedly requiring regional directors to conduct, and the parties and employees to participate in, elections that will not count, it undermined a fundamental statutory goal of ensuring free choice. In our view, any financial burden incurred by the Board and the parties in having to investigate (or in being asked to respond to) unfair labor practice charges alleging conduct that would interfere with employee free choice in an election were one to held or conduct which is inconsistent with the petition itself, but which are ultimately found to lack merit, is outweighed by the critical benefit of ensuring employee free choice. Finally, the commenter does not explain why an incumbent union intent on delaying its decertification until the last possible moment notwithstanding its knowledge that it has lost the support of the unit for reasons entirely unrelated to any employer conduct would necessarily be deterred from filing an unfair labor practice charge by the April 2020 rule given that the April 2020 rule itself delayed certification of the results of the election until the merits of the unfair labor charge are determined. In short, even under the April 2020 rule, the actual decertification of the incumbent union can be delayed by the filing of a nonmeritorious charge even if the election is held as promptly as it would have been had no charge ever been filed.

i. Comments Regarding Judicial Criticism of Blocking Charge Policy

Both our dissenting colleague and some commenters claim that we should refrain from returning to the pre-April 2020 blocking charge policy because it was the subject of judicial criticism.[146] They generally cite the same, decades-old cases that the April 2020 Board relied on in support of its decision to jettison the blocking charge policy. 85 FR 18367, 18376. With due respect, however, those few cases—even if we accepted the dubious interpretation of them advanced by the prior Board and the commenters—do not persuade us that we should decline to return to the pre-April 2020 blocking charge policy.

To begin, it bears repeating that, although the Board's application of the blocking charge policy in a particular case had occasionally been criticized, no court had invalidated the policy

[146] See comments of ABC; CDW; Chamber; NRTWLDF. We note that many of these arguments were persuasively addressed by then-Member McFerran in her 2019 NPRM dissent. See 84 FR 39942–39943.

itself during the more than eight decades that it was in effect. Two of the cases cited by the April 2020 Board to justify jettisoning the policy—*Templeton* v. *Dixie Color Printing Co., Inc.,* 444 F.2d 1064 (5th Cir. 1971), and *NLRB* v. *Minute Maid Corp.,* 283 F.2d 705 (5th Cir. 1960)—arose several decades ago in the Fifth Circuit, which in fact has subsequently and repeatedly *approved* of the blocking charge policy, recognizing that the salutary reasons for the blocking charge policy ''do not long elude comprehension,'' and that the policy had been ''legitimized by experience.'' See *Bishop,* 502 F.2d at 1028–1029, 1032 (and cases cited therein); *Associated Builders & Contractors of Texas, Inc.,* 826 F.3d at 228 fn. 9. Indeed, the Fifth Circuit has taken pains to note—''time and again''—that cases such as *Templeton* do not constitute a broad indictment of the blocking charge policy, but merely reflect the ''most unusual'' circumstances presented there. See *Bishop,* 502 F.2d at 1030–1031.[147]

Similarly, in *NLRB* v. *Midtown Service Co.,* the Second Circuit wholeheartedly endorsed the notion that the Act requires the Board ''to insure . . . employees a free and unfettered choice of bargaining representatives.'' 425 F.2d 665, 672 (2d Cir. 1970). While the court criticized the Board for declining to conduct a rerun election before the employer's unfair labor practices were remedied, that was only because of the highly unusual circumstances presented there, where the employer's unlawful acts were actually designed to support the incumbent union against the decertification petition. See id. at 667, 669, 672 (''If ever there were special circumstances warranting the holding of [a rerun] election, they existed here'' because the union was the ''beneficiary of the Employer's misconduct,'' and thus the union was using the charges to achieve an indefinite stalemate ''designed to perpetuate [itself] in power.''). Although the court also opined that a rerun election should not have been blocked even if the charges had been filed by the decertification petitioner, see id., the blocking charge policy as it existed prior to the effective date of the April 2020 amendments—to which we return—would not have blocked the election in such circumstances, because, as shown, a petition was not blocked under the pre-April 2020 blocking charge policy unless, among other things, the charging party requested that its charge block the petition. See 29 CFR 103.20 (Dec. 15, 2014).

Further, the Seventh Circuit's conclusion many decades ago that the union abused the blocking charge policy in *Pacemaker Corp.* v. *NLRB,* is mystifying. 260 F.2d 880, 882 (7th Cir. 1958). The court appeared to blame the union first for seeking an adjournment of the representation case hearing so that it could file an amended unfair labor practice charge. But the facts as found by the court belie any such conclusion; the discharge that was a subject of the amended unfair labor practice charge in question occurred after the adjournment, not before. Thus, the union could not have filed that amended charge before the hearing. 260 F.2d at 882. Moreover, the court ultimately agreed with the Board that the union's amended charge—alleging that the employer had discharged a union supporter—had merit. Id. at 882–883. The court also appeared to blame the union for seeking to delay the representation proceeding by filing a post-petition amended unfair labor practice charge, because the union had chosen to file a petition despite its other pre-petition unfair labor practice charges. But such criticism was also unwarranted. As the employer itself argued to the administrative law judge, while the union would not waive the amended unfair labor practice charge, the union was *not* requesting a delay based on the post-petition amended unfair labor practice allegations. See *Pacemaker Corp.,* 120 NLRB 987, 995 (1958). In any event, by filing a petition despite prepetition misconduct, a union cannot be deemed to have waived its right to request that the petition be blocked if the employer commits additional unfair labor practices post-petition that would interfere with employee free choice.

Finally, the last case relied on by the April 2020 Board—*NLRB* v. *Hart Beverage Co.,* also decades-old—was not even a blocking charge case, but instead arose at a time when an employer had no right to decline a union's demand for recognition on the basis of authorization cards (and no right to demand that the union seeking Section 9(a) status win an election), unless the employer had a good faith doubt of the union's majority status. 445 F.2d 415, 417–418 (8th Cir. 1971). It was in that context that the union business agent made the statement that the court relied on in concluding that the union was not even interested in obtaining a free and fair election, and therefore had filed the charges to abort the employer's petitioned-for election and obtain a bargaining order.[148] See id. at 417, 420.[149]

[147] As noted above, see supra fn. 102, we are puzzled by our colleague's effort to minimize the significance of *Bishop,* which was decided after *Templeton* and *Minute Maid.* We further observe that *Bishop,* unlike *Templeton* and *Minute Maid,* approvingly discussed the broader policy underpinnings of the Board's blocking charge policy rather criticizing an isolated example of its application.

[148] For the same reasons, we reject our dissenting colleague's effort to invoke *Hart Beverage* as an example of judicial criticism of the historical blocking charge policy.

[149] NRTWLDF also cites to a dissenting opinion in an unpublished case (*T-Mobile USA, Inc.* v. *NLRB,* 717 Fed. Appx. 1, *4–*5 (D.C. Cir. 2018), but that dissenting opinion contained no analysis of the blocking charge policy. As for the NRTWLDF's citation to *NLRB* v. *Gebhardt-Vogel Tanning Co.,* 389 F.2d 71 (7th Cir. 1968), the Seventh Circuit did not hold there that the Board could not properly decline to process a decertification petition on the ground that it was filed during an extension of the certification year made necessary by the employer's unlawful refusal to furnish information during the original certification year. Rather, the court merely concluded that the employer's refusal to bargain could not be deemed unlawful because the certification year had been improperly extended (since there was no proof that the employer had in fact unlawfully refused to furnish the information during the original certification year). See id. at 73, 74–76 (court assumed that it is a ''sound principle'' that ''where a union is deprived of the opportunity to bargain for a substantial portion of the certification year through no fault of its own, the Board may properly extend the union's right to bargain for an equivalent period of time,'' but concluded that ''the Board's finding that 'Respondent had unlawfully delayed in furnishing wage information for a period of 5 months during the certification year' was without the requisite evidentiary support.''). It was in that context that the court cited the Fifth Circuit's decision in *Minute Maid* in support of the proposition that there is no ''evidentiary value'' in an unfair labor practice charge alleging an unlawful refusal to furnish information upon which no complaint was issued and which was later withdrawn. Id. at 75.

Nor does our dissenting colleague and CDW's citation to the concurring opinion in *Scomas of Sausalito, LLC* v. *NLRB,* 849 F.3d 1147 (D.C. Cir. 2017), persuade us that we should decline to return to the pre-April 2020 blocking charge policy. As the court itself acknowledged, *Scomas* was an ''unusual'' case, where an employer withdrew recognition from the incumbent union in good faith based on a facially valid decertification petition only after verifying that the petition signatures demonstrated a loss of majority and where the incumbent union actually ''withheld information [from the employer] about its restored majority status.'' Id. at 1153, 1156, 1157. The court further found that the genesis of the employees' discontent with the incumbent union was not the employer's conduct but an extended period of union neglect, and that ''there is no 'taint' to 'dissipate[].'" Id. at 1157. Obviously, that is not the paradigmatic situation when the blocking charge policy is invoked. To be sure, the concurring opinion went on to discuss in dicta why in its view the employer's option of filing an RM petition when it has a good-faith doubt about a union's majority status would not necessarily enable the employer to promptly withdraw recognition from the union with impunity (because the union potentially could file a blocking charge). Id. at 1159. But, as shown and as the GC's reply comment points out, even if an election pursuant to an RM petition were conducted without delay as under the April 2020 final rule, the employer still could not be certain that the results of the election would be certified (and the union gone) because, under the April 2020

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j. Comments Regarding Particular Board Cases

Nor do the isolated Board cases cited by the commenters, our dissenting colleague, and the April 2020 Board provide a persuasive basis for adhering to the April 2020 rule. We have carefully considered these cases. Even if they illustrated that application of the traditional blocking-charge policy sometimes led to undesirable results, these decisions do not establish some serious, inherent flaw in the policy itself. Instead, whatever minimal costs in delay may result from the policy are far outweighed by the benefits of allowing employees to vote in an election free from interference caused by the employer's unfair labor practices.[150] Given the very long period in which the blocking charge policy was in effect, it is striking that critics of the policy have so few arguable examples to point to.

For example, CDW, our dissenting colleague, and the April 2020 Board (85 FR 18366–18367, 18377) point to *Cablevision Systems Corp.,* 367 NLRB No. 59 (2018), as an example where employees were wrongfully forced to wait for years for a regional director to process a decertification petition under the pre-April 2020 blocking charge policy. As the SEIU points out, however, it cannot fairly be said that the petition in *Cablevision* was delayed by frivolous blocking charges. The decertification petition in that case was filed on October 16, 2014. See *Cablevision Systems Corp.,* 367 NLRB No. 59, slip op. at 1. As CDW concedes in its comment, at the time the decertification petition was dismissed, the General Counsel had already issued unfair labor practice complaints against the employer, and the Regional Director relied on the outstanding complaints—alleging, inter alia, surface bargaining, unlawful discharges, threats, and unilateral changes—in dismissing the petition, while providing that the petition was subject to reinstatement if appropriate after the final disposition of the charges at issue. See RD Decision to Dismiss, Case 29–RD–138839 (Nov. 12, 2014). As the Board explained in denying review of the Regional Director's dismissal, the Regional Director had previously found merit to certain unfair labor practice allegations for which a bargaining order and extension of the certification year were being sought. See Board Order Denying Review, Case 29–RD–138839 (June 30, 2016) (''Such conduct, if proven, would preclude the existence of a question concerning representation and therefore the petition is appropriately dismissed.''). Thus, even if the decertification petition in that case had been filed under the April 2020 rule to which the commenter and the NPRM dissenters urge us to adhere, the petition also would have been dismissed because, as noted, the April 2020 rule did not eliminate the merit-determination dismissal procedure. See *Rieth-Riley,* 371 NLRB No. 109, slip op. at 1, 3, 4.[151]

HRPA argues that *Geodis Logistics, LLC,* Case Nos. 15–RD–217294 and 15–RD–231857, where decertification petitions have been blocked since 2018, illustrates that the blocking charge policy incentivizes the filing of meritless charges, impedes speedy resolution of decertification petitions, and places an inappropriate amount of authority in the hands of regional directors. Our dissenting colleague also cites this case as an example of a situation where ''the passage of time while a charge is blocked, and the attendant turnover in the workforce of employees opposed to a particular union, inures to the benefit of unions attempting to preserve their representative status, at the expense of employee choice.'' However, neither HRPA nor our colleague cites any evidence that the petitions to decertify the union in *Geodis* have been blocked by meritless charges, let alone that the union filed them knowing them to be meritless.[152] While there has not yet been a Board determination that the charge that initially blocked the petitions was meritorious, neither has there been a determination by the Board that the charge was meritless. In fact, the Regional Director issued an unfair labor practice complaint based on that charge.[153] The Board has yet to

rule, certification of the results of any RM election is withheld pending a determination of the merits of any unfair labor practice charge that might have been filed. Moreover, as the concurring opinion appeared to recognize, even if there were no such thing as the blocking charge policy, a union could file objections to the results of an election, which would delay certification of the results. Id. at 1159. In any event, as discussed above, the pre-April 2020 blocking charge policy did not render RM petitions illusory.

[150] In this regard, we part company from our dissenting colleague, who weighs these costs and benefits differently.

[151] While, as CDW notes, an administrative law judge subsequently found that the surface bargaining allegations lacked merit, the judge's dismissal of those allegations were the subject of exceptions to the Board. See Board Order Denying Review, Case 29–RD–138839 (June 30, 2016). Moreover, even if the Board had sustained the dismissal of those surface bargaining allegations, administrative law judges had found that the Employer had violated the Act by discharging unit employees, threatening unit employees, coercively polling unit employees, and unilaterally changing unit employees' working conditions. See *Cablevision Systems Corp.,* 367 NLRB No. 59, slip op. at 1–2, 6 (recounting these and other unfair labor practice findings made by administrative law judges). Accordingly, even if the Board had affirmed the judge's dismissal of the surface bargaining allegations, the petition might still have been properly dismissed. See Board Order Denying Review, Case 29–RD–13889 (June 30, 2016) (''Should the surface bargaining allegation ultimately be found by the Board to be without merit, the Regional Director may consider whether dismissing the petition on other grounds may be appropriate based on the remaining unfair labor practice allegations found to be meritorious, if any, or whether the petition should be reinstated, after final disposition of the unfair labor practice charges.''). To be sure, the Board did not ultimately pass on the merits of the charges, but this was because the parties entered into a non-Board settlement while the charges were pending on exceptions before the Board, with the Employer entering into a collective-bargaining agreement with the Union and paying the discriminatees backpay, and the Union withdrawing its charges. See *Cablevision Systems Corp.,* 367 NLRB No. 59, slip op. at 2.

Nor can it fairly be said that it was the blocking charge policy that prevented the employees from ever voting. The Petitioner in *Cablevision* withdrew the decertification petition on January 16, 2019, even though the Board had previously reinstated the petition in its December 19, 2018 Decision on Review and Order, finding that the parties' settlement agreement could not justify dismissing the petition and preventing the employees from voting during the parties' new three-year collective-bargaining agreement resulting from the settlement (because the settlement agreement was entered into after the petition was filed but prior to any Board determination of the merits of the judges' unfair labor practice findings, and because the settlement agreement did not contain an admission of unlawful conduct on the part of the Employer). See *Cablevision Systems Corp.,* 367 NLRB No. 59, slip op. at 1, 4–5; Order Approving Withdrawal of Petition and Cancelling Hearing, Case 29–RD–138839 (Jan. 24, 2019) (approving Petitioner's written request to withdraw decertification petition).

[152] Mary Alexis Ray filed the original decertification petition in Case 15–RD–217294 on March 27, 2018. See *Geodis Logistics, LLC,* 371 NLRB No. 102, slip op. at 1 (2022). On April 17, 2018, the union filed the original charge in Case 15–CA–218543, and it requested that the charge block the petition. As discussed below, the Regional Director, on behalf of the Board's General Counsel, determined that it was appropriate to issue an unfair labor practice complaint based on that charge, which was still pending when the petitioner filed another decertification petition in Case 15–RD–231857 on November 30, 2018. Id., slip op. at 1, 4, 5 (the majority opinion mistakenly states that the second petition was filed on November 29, 2019).

[153] See October 31, 2018 Complaint and Notice of Hearing, Case 15–CA–218543, alleging, inter alia: that between about February 2018 and March 2018, Geodis provided more than ministerial assistance to employees in helping them remove the union as their collective-bargaining representative; that between about March 2018 and April 2018, Geodis told employees that it was losing customers and/or clients because of the union, that it was losing business because its employees are represented by the union, that it was unable to attract new business because of the union, and that its customers and/or clients were unwilling to do business with it because its employees are represented by the union; that Geodis, although generally prohibiting the use of its photocopiers, allowed employees to use Respondent's photocopier to produce antiunion materials; and that Geodis had transferred its employee Jennifer Smith to a position with more

determine the merits of those complaint allegations, first because of a settlement,[154] and second because, after the settlement agreement was revoked, the case was consolidated with numerous additional unfair labor practice cases, which are currently pending before an administrative law judge.[155]

Although HRPA also points to *Geodis* as proof that the blocking charge policy ''impedes the speedy resolution of decertification petitions,'' it is by no means clear that the question of representation would necessarily have been resolved any sooner in that case had it arisen under the April 2020 rule. To repeat yet again, the April 2020 Board conceded that, although elections would be held in virtually all cases under the April 2020 rule, certification of the results of the election—*i.e.,* actual *resolution* of the question of representation—would be delayed until final Board determination of the merits of the blocking charge(s) and their effect on the petition, which has yet to occur in *Geodis.* Thus, although the unit employees may have been permitted to vote sooner under the April 2020 rule, even if they chose to decertify the union, that choice may not have been effectuated any sooner.[156]

While the commenter also complains that the blocking charge policy places an inappropriate amount of authority in the hands of the regional director, under the statutory scheme, as we have previously explained, it is the regional director, on behalf of the General Counsel, who determines, at least initially, if an unfair labor charge has merit and warrants issuance of a complaint absent settlement, and it is the regional director to whom the Board has long delegated authority to determine (subject to a request for review) whether a question of representation exists and whether and when to conduct an election. The commenter further ignores that even under the April 2020 rule to which the commenter urges the Board should adhere, a petition could be dismissed based on a mere administrative determination by a regional director that certain Type II charges had merit. See *Rieth Riley,* 371 NLRB No. 109, slip op. at 1, 3.[157]

onerous working conditions. See also *Geodis Logistics, LLC,* 371 NLRB No. 102, slip op. at 1, 4. As noted, on November 30, 2018, the Petitioner filed a second decertification petition, Case 15–RD–231857, notwithstanding that the alleged unlawful conduct had not been remedied, and the petitions continued to be held in abeyance at that time. See id.

[154] In October 2019, Case 15–CA–218543 was consolidated with four other unfair labor practice cases alleging that Geodis had further violated the Act by, inter alia: informing employees that it did not recognize the union as the representative of the unit employees and that there was no union there; telling employees it would be futile to join or support the union; threatening unspecified reprisals if they joined or supported the union; discharging one employee and warning two other employees. See October 9, 2019 Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing in Cases 15–CA–218543, 15–CA–226722, 15–CA–232539, 15–CA–239440, and 15–CA–239492. On January 2, 2020, following issuance of the unfair labor practice complaints, the Regional Director dismissed both decertification petitions. The Board denied the employer's request for review of the dismissals, but noted that the decertification petitions were subject to reinstatement, if appropriate, after the final disposition of the unfair labor practice proceedings, and made the Petitioner a party-in-interest to Consolidated Cases 15–CA–218543, 15–CA–226722, 15–CA–232539 15–CA–239440, and 15–CA–230492 for the purpose of receiving notification of the final outcome of those cases. See Board Order Denying Review, Cases 15–RD–217294 and 15–RD–231857 (April 13, 2020).

The hearing on those charges was scheduled to occur on January 27, 2020. However, Geodis initially settled the charges, which resulted in the cancellation of the unfair labor practice hearing that had been scheduled on that complaint. See January 22, 2020 Conformed Settlement Agreement in Cases 15–CA–218543, 15–CA–226722, 15–CA–232539, 15–CA–239440 & 15–CA–239492. Under the terms of that settlement agreement, which contained a nonadmission clause, Geodis agreed to: pay $45,000 to one discriminatee (who waived reinstatement); return another discriminatee to her prior position; remove all references to the disciplines and discharges of five employees; post a Notice to Employees for 60 days promising: (a) not to provide more than ministerial assistance in helping employees remove the Union; (b) not to allow employees to use Employer photocopiers to produce antiunion materials while prohibiting them from using the photocopiers for other purposes; (c) not to threaten employees with discipline because of their union activities or support; (d) not to tell employees that the Employer does not recognize the Union, or that there is no union at the Tennessee and Mississippi facilities; (e) not to make the other 8(a)(1) statements alleged in the original charge in 15–CA–218543 and subsequent charges; (f) not to take various actions against employees because of their union activity, membership or support; and (g) not to ''in any like or related manner'' interfere with employees' Sec. 7 rights. The settlement agreement also provided for the withdrawal of the unfair labor practice complaints.

[155] After the settlement agreement in those five cases, the Union filed a series of additional charges, which the Regional Director determined were meritorious, and the Regional Director partially revoked the settlement agreement. Ultimately, on July 27, 2022, the Regional Director issued an Order Partially Revoking Settlement Agreement, Further Consolidating Cases, and Sixth Consolidated Complaint and Notice of Hearing in Cases 15–CA–218543, 15–CA–232539, 15–CA–239440, 15–CA–239492, 15–CA–264345, 15–CA–265152, 15–CA–270897, 15–CA–274687, 15–CA–282543, 15–CA–285602, 15–CA–285611, 15–CA–286941, 15–CA–286942, 15–CA–288593, and 15–CA–292199, involving the charge allegations that had blocked the initial decertification petition as well as allegations of unfair labor practices that occurred before, during, and after the initial notice-posting period in Case 15–CA–218543 (including discrimination against union supporters), threats of adverse consequences if employees supported the union, and statements of futility. The unfair labor practice hearing opened on January 23, 2023, and the cases remain pending before an administrative law judge.

As the HRPA acknowledges in its comment, the Board unanimously affirmed the Regional Director's decision not to grant the Employer's request to reinstate the decertification petitions, noting that the NLRA permits only employees, not employers, to request and secure reinstatement of decertification petitions. See *Geodis Logistics, LLC,* 371 NLRB No. 102, slip op. at 2, 4. Although the commenter also complains that the employee who filed the original decertification petition is no longer employed in the unit, the Board granted a motion to substitute a different individual as the petitioner in the decertification proceedings. Id. slip op. at 1 fn. 1. On June 24, 2022, the Regional Director denied the new Petitioner's request to reinstate the decertification petitions (originally filed by a different individual) based on the January 22, 2020 settlement agreement, noting that the settlement agreement had been partially revoked and that the complaint had been reinstated. See Order Denying Petitioner's Request to Reinstate the RD Petitions, Cases 15–RD–217294 & 15–RD–231857 (June 24, 2022). On December 14, 2022, the Board denied the Petitioner's request for review of the Regional Director's denial of her request to reinstate the decertification petitions, noting that: (1) a Regional Director may properly revoke their approval of a settlement agreement and issue a complaint if there has been a failure to comply with the settlement agreement or if related post-settlement unfair labor practices have been committed; (2) in such a procedural posture, the administrative law judge in the unfair labor practice cases (and the Board if exceptions are filed) must decide based on record evidence whether the settlement was properly revoked and, if so, whether the respondent committed the various alleged unfair labor practices, both pre-and post-settlement; and (3) the Board cannot decide what are essentially unfair labor practice issues in the context of these representation cases. The Board further noted that its denial of review was ''without prejudice to the Petitioner's reasserting her claim, if appropriate after disposition of the unfair labor practice proceedings, that the parties' settlement agreement requires reinstatement of the petitions under the principles of *Truserv Corp.,* 349 NLRB 227 (2007).'' As noted, the unfair labor practice cases remain pending before an administrative law judge.

[156] Even if an election had been held notwithstanding the charge in Case 15–CA–218543 and the request to block, the election results would not have been certified if the charge was found to have merit. Moreover, even if that charge had been litigated and decided on a standalone basis (notwithstanding the additional charges that were filed) and even if a new election had been held following a finding of merit to the charge, the results of that new election could not have been certified until the Board had determined the merits of the subsequent unfair labor practice charges that were filed concerning the employer's alleged ongoing repeated unlawful conduct (assuming there were additional requests to block or election objections).

[157] While commenters such as the HRPA and NRTWLDF complain about the long delay in effectuating employee free choice in the decertification context, they ignore that unfair labor practices and litigation over objections and determinative challenges can likewise delay effectuation of employee free choice (*i.e.,* Board certification of a union) in the initial organizing context. Indeed, *Geodis,* the very case highlighted by the HRPA, is itself is an example of such delay. When the initial campaign to organize the employees (who are the subject of the decertification petitions in that case) began in 2009, the employees were employed by Geodis' predecessor, Ozburn-Hessey Logistics (OHL). It took some 7 years after the initial organizing campaign commenced—and more than 5 years after the Union won an election—to obtain an enforceable order

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The NRTWLDF also cites four cases arising under the December 2014 amendments to the blocking charge policy—and one case predating the 2014 rule—which it claims demonstrates the policy's shortcomings.[158] Although the NRTWLDF suggests that the cases demonstrate the ability of incumbent unions to file patently frivolous, minor, or false charges to delay their ouster against the wishes of the unit employees under the pre-April 2020 blocking charge policy, NRTWLDF does not demonstrate that the charging parties knowingly filed patently frivolous, minor, or false charges in those cases. We further note that in *Pinnacle Foods Group, LLC,* Case 14–RD–226626, the Regional Director issued a complaint against the employer alleging a failure bargain in good faith (by falling to make itself available on reasonable dates, failing to provide sufficient time for bargaining during the bargaining sessions held, unilaterally changing the lengths of shifts, and unilaterally changing the bidding procedures for those shifts). The parties subsequently entered into a settlement agreement providing for an extension of the certification year. See *Pinnacle Foods Group, LLC,* 368 NLRB No. 97, slip op. at 1 (2019). The incumbent union subsequently won the decertification election that was conducted. See November 27, 2019 Certification of Representative, Case 14–RD–226626. We additionally note that in *Apple Bus,* nearly 8 months of the delay can in no sense be deemed improper under extant law as the original decertification petition (filed on July 31, 2017) in Case 19–RD–203378 was properly dismissed under the successor-bar rule. See Board Order Denying Review of Regional Director's Decision to Dismiss the Petition, Case 19–RD–203378 (Dec. 14, 2017). And the new decertification petition that was filed on March 15, 2018 in Case 19–RD–216636 was ''held in abeyance on the basis of successive *settled* unfair labor practice charges.'' See Board Order Denying Petitioner's Fourth and Fifth Requests for Review of Regional Director's determinations to hold petition in abeyance in Case 19–RD–216636 (Nov. 18, 2019), before the Union disclaimed interest and the decertification petitioner withdrew its petition. See Order Approving Withdrawal of Petition, Cancelling Hearing, and Revoking Certification, Case 19–RD–216636 (Nov. 27, 2019). Moreover, in the 5 cited cases, the employees eventually either were able to vote,[159] or the union disclaimed interest in continuing to represent the unit, thereby obviating the need for an election.[160] Accordingly, notwithstanding the delay in case processing, the cited cases do not persuade us that we should decline to adopt the proposed rule.[161]

k. Comments Regarding the Pre-April 2020 Blocking Charge Policy's Alleged Unjustified Disparate Treatment of Petitioners

Both our dissenting colleague and some commenters claim that, in contrast to the April 2020 rule, the pre-April 2020 blocking charge policy unjustifiably treated petitioners in an initial organizing context differently from petitioners in the decertification context, and we should therefore decline to return to it. They suggest that under the pre-April 2020 blocking charge policy the election would always proceed in the initial organizing context if the petitioner wanted it to proceed, whereas in the decertification context, the election would not necessarily proceed when there was a request to

requiring the employees' employer to bargain with the Union. See *Ozburn-Hessey Logistics, LLC* v. *NLRB,* 833 F.3d. 210, 212–213, 214–216, 224–225 (D.C. Cir. 2016). The litigation concerning the campaign and its aftermath, which included petitioning federal district courts for Sec. 10(j) relief, involved OHL's actions both before and after the revised tally of ballots showed that the union had won the 2011 election. See *Ozburn-Hessey Logistics, LLC,* 357 NLRB 1456 (2011), enfd. 605 Fed. Appx. 1 (D.C. Cir. 2015); *Ozburn-Hessey Logistics, LLC,* 357 NLRB 1632 (2011), enfd. 609 Fed. Appx. 656 (D.C. Cir. 2015); *Ozburn-Hessey Logistics, LLC,* 359 NLRB 1025 (2013) (recess appointment case), reaffirmed 361 NLRB 921 (2014); *Ozburn-Hessey Logistics, LLC* 362 NLRB 977 (2015), enfd 833 F.3d 210 (D.C. Cir. 2016); *Ozburn-Hessey Logistics, LLC,* 362 NLRB 1532, 1535 (2015) (including broad ''cease and desist'' language due to respondent's grave and repeated violations), enfd. 689 Fed. Appx. 639 (D.C. Cir. 2016); *Ozburn-Hessey Logistics, LLC,* 366 NLRB No. 173 (2018), enfd. 939 F.3d 777 (6th Cir. 2019); *Ozburn-Hessey Logistics, LLC,* 366 NLRB No. 177, slip op. at 1 fn. 3, 13 (2018) (imposing extraordinary remedies, including a three-year notice-posting period, due to respondent's ''extraordinary record of law breaking''), enfd. in part 803 Fed. Appx. 876 (6th Cir. 2020). And, as discussed above, Geodis is itself alleged to have committed multiple unfair labor practices when it became the unit employees' employer.

[158] See comments of NRTWLDF (citing *Scott Brothers Dairy/Chino Valley Dairy Products,* Case 31–RD–001611; *ADT Security Services,* Case 18–RD–206831 (Dec. 20, 2017); *Arizona Public Service Co.,* Case 28–RD–194724; *Pinnacle Foods Group, LLC,* Case 14–RD–226626; *Apple Bus Co.,* Cases 19–RD–203378 and 19–RD–216636. The 2020 Board referenced these cases as well. 85 FR at 18377.

[159] See Tally of Ballots in *Scott Brothers Dairy/Chino Valley Dairy Products,* Case 31–RD–1611 (Aug. 10, 2011); Original Tally of Ballots in *Arizona Public Service Co.,* Case 28–RD–194724 (July 6, 2017) & Rerun Tally of Ballots, Case 28–RD–194724 (Aug. 30, 2017); Tally of Ballots in *Conagra Brands* (successor to *Pinnacle Foods Group*), Case 14–RD–226626 (Nov. 15, 2019).

[160] See Order Approving Withdrawal of Petition, Cancelling Hearing, and Revoking Certification in *Apple Bus Co.,* Case 19–RD–216636 (Nov. 27, 2019) (referencing union's disclaimer of interest in representing the unit). In another case, the certification of representative was revoked and the petition was withdrawn, also obviating the need for an election. See ARD Letter Approving Petitioner's Withdrawal Request and Revoking Certification of Representative, *ADT, LLC,* Case 18–RD–206831 (Jan. 2, 2018).

[161] The NRTWLDF also generally contends that it is very difficult for decertification petitioners to file a timely petition and to have it processed, and we should therefore not make it any more difficult by returning to the pre-April 2020 blocking charge policy. For example, it criticizes the Board's longstanding window-period requirements for filing petitions during the term of a collective-bargaining agreement, and the requirement that a decertification petition be supported by an adequate showing of interest, which must be collected ''on personal time'' and which can subject solicitors to ''unwanted attention, threats or worse.''

Those complaints, which concern matters beyond the scope of this rulemaking, do not persuade us that we should refrain from returning to the pre-April 2020 blocking charge policy. To repeat, the blocking charge policy is not designed to make it more difficult for employees to decertify a union. Rather, the policy, which also applies outside the decertification context, is designed to protect employee free choice. In any event, the commenter ignores that petitioners in the initial organizing context face the same or analogous difficulties. For example, employees who want to become represented by a union cannot file a petition, or have one filed on their behalf, without first obtaining an identical 30 percent showing of interest, which likewise must be collected on personal time. 29 CFR 102.61(a)(7), 102.61(c)(8) (Dec. 18, 2019); Casehandling Manual Section 11023.1 (August 2007); Casehandling Manual Section 11023.1 (September 2020). And when employees solicit support for a petition seeking to have a union represent them, they obviously risk incurring the wrath of their employer—which, unlike a union, directly controls their livelihood—and the displeasure of any antiunion colleagues. Moreover, Sec. 9(c)(3) of the Act provides that ''[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.'' 29 U.S.C. 159(c)(3). Accordingly, unions too cannot always file petitions when they would like. See NLRB, An Outline Of Law And Procedure in Representation Cases Section 10–110 p. 115 (June 2017) (noting that although ''[t]he prohibition of Section 9(c)(3) does not preclude the processing of a petition filed within 60 days before the expiration of the statutory period so long as the election resulting from such petition is not held within the prohibited time[,] . . . petitions filed more than 60 days before the end of the statutory period will be dismissed.''). Contrary to the commenter's additional complaint about the difficulty decertification petitioners have in determining the scope of the unit, a decertification petitioner generally has a much easier time in determining the scope of the unit, because a decertification election typically must be held in a unit coextensive with the certified or recognized unit, see, *e.g., Mo's West,* 283 NLRB 130, 130 (1987), whereas the appropriate unit in which to conduct an election in the initial organizing context ordinarily has not been determined when the petition is filed. As for the commenter's additional argument that a decertification petitioner must file an allegedly burdensome prehearing responsive statement of position, that requirement applied to all petitioners (and not just decertification petitioners) when it was in effect (see 29 CFR 102.63(b)(1)(ii); 102.63(b)(2)(iii); 102.63(b)(3)(ii) (Dec. 18, 2019), and, in any event, that requirement was recently rescinded by the Board in a separate rulemaking. See *Representation-Case Procedures,* 88 FR 58076, 58085 (Aug. 25, 2023).

block filed by the incumbent union even if the decertification petitioner wanted to proceed to an election.[162]

We are not persuaded by this argument. To begin, the argument's premise—that the pre-April 2020 blocking charge policy did not create a level playing field in any respect—ignores that employers were also permitted to file requests to block elections sought by unions in the initial organizing context. The pre-April 2020 blocking charge policy which we codify allowed ''*any* party to a representation proceeding,'' including employers, to file requests to block. 29 CFR 103.20 (Dec. 15, 2014) (emphasis added). For example, if an employer filed an unfair labor practice charge alleging that a petitioning union in an initial organizing context threatened to assault employees if they did not vote for the union, together with a request to block that was supported by an adequate offer of proof, regional directors had authority to block the election even if the petitioning union wished to proceed to the election. Similarly, decertification petitioners were free to file unfair labor practice charges and requests to block based on employer or incumbent union misconduct that would interfere with the employees' ability to freely vote against continued representation, just as petitioning unions could file requests to block in the initial organizing context. In short, under the pre-April 2020 blocking charge policy which the final rule restores and codifies, petitioners in an initial organizing context and in the decertification context could both file requests to block and could both face election delays in cases where they would prefer to proceed directly to an election as a result of blocking charges filed by other parties.

To be sure, as previously discussed, it was also the case under the pre-April 2020 blocking charge policy that a petitioning union in an initial organizing context could—by refraining from filing a request to block—obtain a prompt election notwithstanding the employer's commission of unfair labor practices (such as a threat to retaliate against union supporters), whereas a decertification election could be delayed over the objections of the decertification petitioner where the incumbent union had filed a request to block based on the employer's commission of unfair labor practices (such as a threat to retaliate against union supporters). But the petitioners occupy very different positions in those two contexts. In the latter, the petitioner's goal—to oust the union—is aided by the alleged unfair labor practice, whereas in the former the petitioner's goal is undermined by the alleged unfair labor practices. We agree with the December 2014 Board that depriving the petitioner in an initial organizing context of the ability to proceed to an election if it so chooses in the face of employer unfair labor practices designed to keep the union out of its establishment would compound the injustice and ''doubly benefit'' the employer by allowing the employer to delay the election that seeks the certification of a collective-bargaining representative for its employees over the objections of that very petitioning union. 79 FR 74429 fn. 534. By contrast, permitting a decertification petitioner to proceed to an election over the objections of the incumbent union where an employer has threatened to retaliate against employees who vote in favor of continued representation would compound the unfair labor practices and benefit the employer and the decertification petitioner. Accordingly, we decline the NRTWLDF's suggestions that the Board should either eliminate the ability of all petitioners to obtain an immediate election where they have filed unfair labor practice charges (but nevertheless think they can still prevail) and make them wait until the Board makes its own independent determination of the merits of the charge, or grant decertification petitioners the ability to obtain an immediate election when an incumbent union has filed a charge alleging conduct that would interfere with employee free choice or would be inherently inconsistent with the petition itself.[163]

l. Comments Regarding Alleged Inconsistency Between the Pre-April 2020 Blocking Charge Policy and Ideal Electric

The April 2020 Board also criticized the blocking charge policy as creating ''an anomalous situation'' whereby conduct that, under *Ideal Electric,* 134 NLRB 1275 (1961), cannot be found to interfere with employee free choice if alleged in election objections (because it occurred prepetition), nevertheless can be the basis for delaying or denying an election. 85 FR at 18367, 18393. That argument does not persuade us that we should refrain from returning to the pre-April 2020 blocking charge policy. Put simply, the supposed anomaly is more apparent than real. To begin, *Ideal Electric* does not preclude the Board from considering prepetition misconduct as a basis for setting aside an election. As the Board has explained, ''*Ideal Electric* notwithstanding, the Board will consider prepetition conduct that is sufficiently serious to have affected the results of the election.'' *Harborside Healthcare, Inc.,* 343 NLRB 906, 912 fn. 21 (2004). Accord *Madison*

[162] See reply comments of NRTWLDF. See also comments asserting that ''[i]n practice, employees and employers cannot 'block' a union certification election. The same standard should apply to decertification elections.'' Paul Andrews; Anonymous #143; Anonymous 83; Anonymous 106; Anonymous 113; Anonymous 123; Anonymous 152; Anonymous 76; Kenneth Bailey; Donald Barefoot; Barry Barkley; Kathleen Brown; Howard Butz; Dawn Castle; Kenneth Chase; John Churchill; Marvin Graham; Annette Craig; Julie D'Alessandro; Richard Damico; Daniel De La O; John-G Donovan; Edward Farrow; R.E. Fox; John Gaither; Allan Gardiner; Rachel Hughes; Gary Kirkland; Alan Goldberg; Robert Henes; Ron Hinds; Irene Holt; Marta Howard; Deborah Hurd; Insignia Design Lrd; Jeffrey Kilgariff; Chuck Kirkhuff; Fred Lambing; Mark Larsen; Terrence Linderman; Philip Martin; Charles Maurhoff; Mike Mayo; Daniel McCormack; Kevin McLaughlin; Tim Modert; Gwen Myers; Mike O'Donnell; Richard Park; James Pearce; John Raudabaugh; Saul Raw; Craig Root; Mary Ellen Rozmus; Lorraine Schukar; Randy Schultz; Dane Smith; Kathy Stewart; Elizabeth Turner; George Zolnoski.

[163] We further note that if the Board were to eliminate the charging party's ability to proceed to an immediate election until the Board makes its own independent determination of the merits of charges they file, it would delay elections even more than they are delayed under the Board's historical blocking charge policy. Moreover, if the Board were to deprive parties of the ability to obtain an election until it made its own independent determination of the merits of pending charges, it would eliminate the ability of parties to settle the unfair labor practice charges that are delaying elections, even though such settlements can obviate the need for lengthy litigation before an administrative law judge, the filing of exceptions to the Board, and appeals to the circuit courts. After all, a settlement of unfair labor practice charges, by definition, does not constitute an independent Board determination of the merits of those charges. To the extent that the NRTWLDF claims that it is unfair to permit unions to file objections to elections that they lose if they did not file requests to block the elections beforehand, we simply disagree. There is no double standard here; under the pre-April 2020 blocking charge policy to which we return, petitioners in initial organizing cases *and* petitioners in decertification cases both have the option to choose to file unfair labor practice charges prior to the election *without* requesting to block the election and then file objections afterwards (just as the petitioners in both contexts have the same right to file requests to block before the election). The commenter certainly does not explain why it interferes with employee free choice for the Board to decline to certify the results of an election based on meritorious objections that are filed after the election. We additionally note that employers, too, may affect the timing of elections by filing adequately supported requests to block or, as the 2014 Board noted (79 FR 74429 fn. 534), by choosing when to settle unfair labor practice charges filed against them.

For similar reasons, we reject our dissenting colleague's suggestion that the Board's 2023 Election Rule demonstrates that the Board is treating petitioners in initial organizing cases differently than petitioners in decertification cases. See *Representation-Case Procedures,* 88 FR 58076 (2023). The 2023 Election Rule, like the instant rulemaking, represented an effort to balance the Board's duties to ''duty to protect employees' rights by fairly, efficiently, and expeditiously resolving questions of representation.'' Id. at 58079.

Square Garden CT., LLC, 350 NLRB 117, 122 (2007). And, as noted, a unanimous Board held in *Rieth-Riley* that even under the April 2020 rule, regional directors remained free to dismiss petitions—and thereby block elections—in cases involving certain types of Type II *prepetition* misconduct, at least so long as the regional director determines that the Type II charge has merit before dismissing the petition. See *Rieth-Riley,* 371 NLRB No. 109, slip op. at 1, 2, 3, 8 (majority affirms regional director's dismissal of decertification petitions filed on March 10, 2020 and August 7, 2020 based on prepetition misconduct that was the subject of prepetition complaints; dissent ''agree[s] with the majority that regional directors retain the authority to dismiss an election petition, subject to reinstatement, in appropriate circumstances, at least where, as here, the regional director has found merit to unfair labor practice charges and issued a complaint before the petition was filed.'').[164]

m. Comments That the Pre-April 2020 Blocking Charge Policy Impeded Settlement

The April 2020 rule also appeared to suggest that the pre-April 2020 blocking charge policy impeded settlement and that the policy should therefore be eliminated to promote settlement of blocking charges. 85 FR 18380.[165] In the NPRM, we noted that we were not entirely certain that we understood the prior Board's cryptic statements in this regard. 87 FR 66907. We remain of the same view after reviewing the comments. To the extent that the April 2020 Board adopted the rule because it believed the rule would promote settlement (by enabling the parties to know the results of the election during their settlement discussions), this does not persuade us that we should refrain from restoring the Board's historical blocking charge policy. The blocking charge policy advances the core statutory interest of promoting employee free choice regarding whether to be represented by a labor organization for purposes of collective bargaining. We believe that, even assuming for purposes of argument that the April 2020 rule promotes settlement of charges, the worthy administrative goal of promoting settlement of unfair labor practice charges should not trump the fundamental statutory policy of protecting the right of employees to freely choose whether to be represented for purposes of collective bargaining by labor organizations.

In any event, we note that the April 2020 Board did not explain why parties would in fact be more likely to settle a charge under the April 2020 rule (which provides for the holding of an election in virtually all cases) than they would be to settle if the same charge were instead holding up an election and preventing employees from voting (under the pre-April 2020 blocking charge policy). And we question whether that is the case. Indeed, we suspect that the April 2020 Board thought that settled charges should not be deemed meritorious in part because it believed that at least some employers thought that it was worth settling blocking charges under the historical blocking charge regime that they otherwise would not have settled just so that their employees could vote ''sooner'' to possibly rid themselves of their representative in a decertification election.[166] However, as noted, under the April 2020 rule, employees are permitted to vote even if the employer does not settle a pending charge against it before the election. Nor is it clear why the April 2020 rule would necessarily encourage a union that is seeking to delay its ouster to settle its unfair labor practice charge after the election. As noted, under the April 2020 rule, the certification of results is withheld until there is final disposition of the charge and its impact on the election by the Board. 85 FR 18370, 18378, 18399. In other words, under the April 2020 rule, the outcome of the representation case still must await the outcome of the unfair labor practice case (even though an election has been held), the same result that obtained under the Board's historical blocking charge policy. And it takes the same amount of time to determine the merits of the charge whether that determination is made before an election is conducted (as under the Board's historical blocking charge policy) or whether that determination is made after the election (as is the case under the April 2020 rule).

We also reject the April 2020 Board's apparent view that once the results of the election are known, the unfair-labor-practice-charge-settlement discussions are simplified because the parties' strategic considerations related to the election are removed from consideration. 85 FR 18380. Thus, although under the April 2020 rule, an election is held in virtually all cases, parties still have to consider the representation case as part of their settlement negotiations regarding the unfair labor practice charge(s). Because, in the view of the April 2020 Board (85 FR 18377), a ''settled charge'' cannot be deemed meritorious unless it has been admitted by the charged party, a settled charge cannot result in a rerun election unless the charged party agrees to a rerun election as part of the settlement agreement or admits that it violated the Act as part of the settlement. Nor under current law can a post-petition settlement result in the petition being dismissed unless the charged party admits that it violated the Act as part of the settlement or the decertification petitioner agrees to withdraw its petition as part of the settlement or the Regional Director finds that the petition was instigated by the employer or that the employees' showing of interest in support of the petition was solicited by the employer. See *Cablevision Systems Corp.,* 367 NLRB No. 59, slip op. at 3 & fn. 9. Thus, the party seeking to set aside the election results will need to address the representation case as part of its settlement discussions regarding the unfair labor practice charge(s) it filed. In other words, the charging party will want the charged party to agree to a rerun election or to admit that it violated the Act as part of the settlement.[167] The April 2020 Board offered no compelling explanation for why an incumbent union supposedly intent on delaying its ouster would not insist on an admission of wrongdoing (which would result in dismissal of the petition) or agreement to a new election as the price of settlement.

[164] Moreover, as the April 2020 Board implicitly conceded, under the April 2020 rule, it is equally the case that ballots will ''never be counted'' in some cases based on serious prepetition misconduct, such as where the employer instigates the petition and where a complaint issues within 60 days of the election. 85 FR 18378, 18380, 18399 (even if the ballots are counted under the April 2020 rule because the complaint on the Type II charge issues more than 60 days after the election, the results of the election will be set aside if the Board ultimately decides that the charge that was the subject of the request to block has merit).

[165] The April 2020 rule, however, did not ''disturb the Board's case law addressing the effects of various types of settlements.'' 85 FR 18380. Thus, ''an employer who agrees in a settlement agreement to bargain must do so for a reasonable period, and a decertification petition filed *after* such a settlement and during that reasonable period must be dismissed.'' *Truserv Corp.,* supra, 349 NLRB at 230 (emphasis in original).

[166] In a related vein, our dissenting colleague suggests that ''employers might decide to settle unfair labor practice charges for reasons unrelated to their merit,'' noting the prevalence of nonadmission language in settlements.

[167] Alternatively, as the Board observed in *Truserv Corp.,* unions have an incentive to include decertification petitioners in settlement discussions to allow for the possibility that decertification petitioners could agree to a settlement that provides for dismissal of the petition that was filed before the settlement. 349 NLRB at 231, 232 fn. 14.

n. Comments That This Rulemaking Constitutes Needless Policy Oscillation

Some commenters, such as CDW and the Chamber, contend that our rulemaking constitutes needless policy oscillation that tends to upset the settled expectations of the Agency's stakeholders while undermining the very policy of employee free choice on which the 2020 rule is predicated and that tends to threaten the legitimacy of the Agency. Our dissenting colleague also articulates this view. We could not disagree more. As shown, it was the April 2020 Board that set aside the Board's historical blocking charge policy that had been in effect since the early days of the Act and that had adhered to by Boards of differing policy perspectives for more than eight decades. The April 2020 Board did so without pointing to anything that had changed in the representation case arena to justify jettisoning the policy: Congress had not amended the Act in such a way as to call the blocking charge policy into question; no court had invalidated the policy; and significantly, the Agency's career regional directors—the officials who are charged with administering the policy in the first instance, and whose opinions were explicitly sought and received by that Board—had publicly endorsed the policy. And, for the reasons discussed at length in this preamble, we believe that restoring and codifying the pre-April 2020 blocking charge policy better protects employee free choice and better enables us to conduct elections under conditions as nearly ideal as possible, which should serve to heighten the Board's legitimacy.

In sum, we recognize that under the April 2020 rule, elections are conducted more speedily than they were conducted under the Board's historical blocking charge policy as amended by the December 2014 rule. However, a speedy election is not desirable in and of itself if it does not reflect the free choice of the unit employees. In our considered policy judgment, restoring and codifying the Board's historical blocking charge policy, as amended by the 2014 rule, represents a more appropriately balanced approach than the April 2020 rule. The policy to which we return simply permits regional directors to delay conducting an election at the request of a party who has filed an unfair labor charge alleging conduct that would interfere with employee free choice in an election or that is inherently inconsistent with the petition itself—provided that the charge is supported by an adequate offer of proof, the charging party agrees to promptly make its witnesses available, and provided no exception is applicable—until the merits of the charge can be determined. It cannot be denied that most elections were never delayed under the policy to which we return and that many of the elections that were delayed by that policy were properly delayed by meritorious charges. Further, as we have mentioned repeatedly, even though employees are permitted to vote sooner under the April 2020 rule when there are concurrent unfair labor practice charges, the employees' choice is not necessarily effectuated significantly sooner because the certification of the results of the elections conducted under those circumstances must still await a determination of the merits of the unfair labor practice charge. In our view, the pre-April 2020 blocking charge policy better protects employee free choice and better enables us to conduct elections under circumstances as nearly ideal as possible than adherence to the April 2020 rule. Under the pre-April 2020 blocking charge policy to which we return, employees are not required to vote under coercive conditions over the objections of the charging party as they are under the April 2020 rule, and employees *are* permitted to vote if the charges that delay the election are ultimately found to be nonmeritorious.[168]

[168] Some commenters argue that we should rescind the portion of the April 2020 rule addressing the blocking charge policy because the April 2020 Board never corrected the faulty data—including the data that artificially inflated the number of petitions blocked as a result of the blocking charge policy and the data that grossly overstated the period of time that petitions were blocked as a result of the blocking charge policy—in the 2019 NPRM that led to the April 2020 rule. See comments of AFL–CIO/NABTU (Initial and Reply); NNU; SEIU. The NRTWLDF argues in its reply comments that if accurate statistical analysis of the prior rule's impact is required to survive an APA challenge, then the instant rule ''falls woefully short'' because the NPRM did not contain, and the pro-rule commenters have not cited evidence establishing that the April 2020 rule has resulted in a spike in the number of elections being set aside (or petitions being dismissed). It also notes that the April 2020 Board ''made a determination based on policy concerns—rather than based on the data—that the rule should be promulgated.'' Reply Comments of NRTWLDF.

To be clear, we find it unnecessary to rely on the inclusion of faulty data in the 2019 NPRM that led to the April 2020 rule as a basis for adopting the instant rule. Nor do we rely on the AFL–CIO/NABTU's claims that the April 2020 rule's blocking charge amendments were not a logical outgrowth of the 2019 NPRM's proposed blocking charge proposal and that the April 2020 Board failed to respond to significant comments. See also comments of NNU. In other words, even if the 2019 NPRM that led to the April 2020 rule had not contained any faulty data (and even if the 2019 NPRM had proposed the blocking charge provisions ultimately adopted in the April 2020 rule and the April 2020 rule had responded to all significant comments to the satisfaction of the commenters), we would still rescind that rule.

The April 2020 Board ultimately made a policy choice to modify the Board's historical blocking charge policy that did not depend on statistical analysis (85 FR 18377) and, as explained at length above, we likewise have made a policy choice that returning to the Board's historical blocking charge policy, as modified by the December 2014 rule, better protects employee free choice and better enables the Board to conduct elections under laboratory conditions than the April 2020 rule. The April 2020 Board conceded that its rule would require the Board to conduct at least some elections under coercive circumstances. That is undeniably true and requires no statistical evidence to demonstrate. As noted, it is also the case that elections have been set aside under the April 2020 rule because of charges filed by parties to the representation case alleging pre-election unfair labor practice conduct—just as the April 2020 Board conceded would be the case. The dissenters to the NPRM in this rulemaking also conceded, as they had to, that we have the authority to return to the pre-April 2020 blocking charge policy. 87 FR 66915.

The Board makes this change, ''conscious'' of its ''change of course,'' because ''there are good reasons'' for returning to the December 2014 rule's blocking charge provisions and based on those reasons, we believe that that rule does a better job of advancing the purposes of the Act than the April 2020 rule. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). See also *AFL–CIO* v. *NLRB,* 471 F. Supp. 3d 228, 241 (D.D.C. 2020) (''[T]he Board's choice 'not to do an empirical study does not make [the agency's action] an *unreasoned* decision' for APA purposes, *Chamber of Commerce of U.S.* v. *SEC.,* 412 F.3d 133, 142, 366 U.S. App. DC 351 (D.C. Cir. 2005) (emphasis added), and this is especially so given that the NLRB specifically explained that its 'reasons for revising or rescinding some of the 2014 amendments are . . . based on non-statistical policy choices[.]' ''), affd. in part 57 F.4th 1023 (D.C. Cir. 2023).

3. Final Rule Provisions Restoring and Codifying the Historical Blocking Charge Policy

In the NPRM, we proposed to rescind Section 103.20 of the 2020 rule and replace it with the same regulatory language that appeared in the 2014 rule. In effect, the proposed rule sought to return to the Board's historical blocking charge policy, as amended by the 2014 rule. For the reasons set forth extensively above, we are persuaded that restoring the pre-April 2020 blocking charge policy in full is appropriate. However, for the sake of clarity, the final rule includes additional regulatory language setting forth the basic contours of the historical blocking charge policy, as amended by the 2014 rule. Below, we summarize these provisions of the final rule. We emphasize that nothing in the language below is intended to alter the blocking charge policy that was in effect prior to the 2020 rule.

Section 103.20(a) of the final rule includes the language of the first three sentences of proposed Section 103.20. As noted above and in the NPRM, these sentences were added to the Board's Rules and Regulations by the 2014 rule.

Section 103.20(a) of the final rule sets forth the 2014 rule's requirement that whenever any party to a representation proceeding seeks to block the processing of an election petition, that party must simultaneously file a written offer of proof listing the names of witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony and promptly make its witnesses available.

Section 103.20(b) and Section 103.20(c) of the final rule break the final sentence of proposed Section 103.20 into separate subsections corresponding to Type I and Type II charges, respectively, and make explicit what was implicit in the proposed regulatory text. As under the 2014 rule, under Section 103.20(b), if a regional director determines that a party's offer of proof describes evidence that, if proven, would interfere with employee free choice in an election, the regional director shall, absent special circumstances,[169] hold the petition in abeyance.[170] Section 103.20(b) provides that the regional director shall notify the parties of the determination to hold the petition in abeyance. The requirement that the regional director provide notice is consistent with the Casehandling Manuals in effect before and after the 2014 rule. See, *e.g.,* Casehandling Manual Section 11730.7 (August 2007); Casehandling Manual Section 11730.7 (January 2017). Section 103.20(c) mirrors the language of Section 103.20(b) except that it further provides that, in appropriate circumstances, the regional director should dismiss the petition subject to reinstatement and notify the parties of this determination. Consistent with *Rieth-Riley* and longstanding practice predating the 2014 rule, ''the appropriate circumstances'' in which the regional director may dismiss the petition subject to reinstatement are when the regional director has made a determination that certain types of Type II charges have merit. See Casehandling Manual Sections 11730.1, 11730.3, 11733, 11733.2 (August 2007); *Rieth-Riley,* 371 NLRB No. 109, slip op. at 3 (merit-determination dismissals ''hinge on [the Regional Director's] determination . . . that [the Type II] unfair labor practice charge has merit'').

As under the 2014 rule, Section 103.20(d) provides that if the regional director instead determines that the offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or be inherently inconsistent with the petition itself, the regional director will continue to process the petition and conduct the election where appropriate.

Section 103.20(e) of the final rule provides that if, after holding a petition in abeyance, the regional director determines that special circumstances have arisen or that employee free choice is possible notwithstanding the pending unfair labor practice charges, the regional director may resume processing the petition. We note that this is consistent with longstanding practice and the Board's Casehandling Manual. See Casehandling Manual Section*s* 11730.4, 11731 (August 2007); Casehandling Manual Sections 11730.4, 11731 (January 2017).

Section 103.20(f) of the final rule provides if, upon completion of the investigation of the charge, the regional director determines that the charge lacks merit and is to be dismissed, absent withdrawal, the regional director shall resume processing the petition, provided that resumption of processing is otherwise appropriate. Once again, this provision is consistent with longstanding practice and the Board's Casehandling Manual. See Casehandling Manual Section 11732 (August 2007). Consistent with existing practice, in certain circumstances, it may not otherwise be appropriate to resume processing the petition to an election, such as when the petition has been withdrawn or when there are additional pending unfair labor practice charges supported by an adequate offer of proof and a request to block (unless the director determines that special circumstances are present). By definition, this section does not apply where a petition has been dismissed following a regional director's determination that the Type 2 charge had merit.

Finally, Section 103.20(g) of the final rule provides that upon final disposition of a charge that the regional director initially determined had merit, the regional director shall resume processing a petition that was held in abeyance due to the pendency of the charge, provided that resumption of processing is otherwise appropriate. For example, if a petition is being held in abeyance based on an unfair labor practice charge that resulted in the issuance of an unfair labor practice complaint, the regional director shall resume processing the petition when the respondent has taken all the action required by a Board order (or when the Board dismisses the complaint following an unfair labor practice hearing), provided that resumption of the processing is otherwise appropriate. Like the previous sections, this provision is consistent with longstanding practice and the Board's Casehandling Manual. See Casehandling Manual Sections 11730.2 and 11734 (August 2007). Consistent with existing practice, in certain circumstances, it may not otherwise be appropriate to resume processing the petition to an election, such as when the petition has been withdrawn or when there are additional pending unfair labor practice charges supported by an adequate offer of proof and a request to block (unless the regional director determines that special circumstances are present). As is the case with Section 103.20(f), Section 103.20(g) does not apply when a petition has been dismissed by a regional director pursuant to the merit-determination dismissal procedure. Rather, consistent with existing practice, if a petition has been dismissed because of a Type II charge and there was a provision for reinstatement of the dismissed petition on application of the petitioner after final disposition of the unfair labor practice case, the petition is subject to reinstatement on the petitioner's application only if the allegations in the unfair labor practice case, which caused the petition to be dismissed, are ultimately found to be without merit. See Casehandling Manual Sections 11733.2(a), 11733.2(b) (August 2007).[171]

The final rule includes a severability provision to codify the Board's view that the paragraphs of Section 103.20 are intended to be severable. Paragraph (h) recites that ''[t]he provisions of this section are intended to be severable'' and that ''[i]f any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.'' In addition, as noted

[169] As under the 2014 rule, ''[o]ur use of the term 'special circumstances' is merely intended to recognize the longstanding reality that regional directors have discretion to continue to process petitions notwithstanding the pendency of charges that would otherwise result in a petition being held in abeyance. In this way, regional directors will continue to have discretion to engage in a balancing of relative hardships concerning the blocking of an election . . . . See Sec[.] 11731.2 of the [August 2007] Casehandling Manual.'' 79 FR 74419 fn. 488.

[170] This language is also consistent with 2014 rule preamble. See id. at 74419–74420 (explaining that 2014 rule amendments ''will serve to provide the regional director with the information necessary to assess whether the unfair labor practice charges have sufficient support and involve the kind of violations that warrant blocking an election [. . . .] This information will also be provided within a time frame that will assist the regional director in making a more expeditious decision on whether to hold the petition in abeyance.'').

[171] This section of the final rule does not address the effect of settlements or disturb the Board's existing case law addressing the effects of various types of settlements.

above,[172] in the event that the blocking charge final rule text promulgated here is deemed invalid, the Board would nevertheless adhere to its decision to rescind the 2020 rule's provisions addressing the blocking charge policy. In that event, the Board's view is that the historical blocking charge policy, which was developed through adjudication and contained in the pre-rulemaking Casehandling Manual, would again be applied and developed consistent with the precedent that was extant before the 2020 rule was promulgated, unless and until the policy were revised through adjudication.[173] The Board is of the view that the rescission of the blocking charge policy is separate and severable from the portions of the rule addressing the voluntary-recognition bar doctrine and the application of the voluntary recognition bar and contract bar in the construction industry. The blocking charge policy operates independently and autonomously of these aspects of Board law.

B. Rescission of Rule Providing for Processing of Election Petitions Following Voluntary Recognition; Voluntary-Recognition Bar to Processing of Election Petitions

1. Introduction

As mentioned above, the November 4, 2022 NPRM proposed (1) to rescind Section 103.21 of the Board's Rules and Regulations, adopted in April 2020, which modified the Board's voluntary-recognition bar doctrine to establish a new notice-and-election procedure; and (2) to replace the rescinded provision with a new Section 103.21, essentially codifying the voluntary-recognition bar doctrine as reflected in *Lamons Gasket Co.,* 357 NLRB 739 (2011), which had been overruled by the 2020 rule. 87 FR 66909.

Having carefully considered the public comments received in response to the NPRM, the Board has decided to rescind the April 2020 rule and to adopt a final rule that is identical to the proposed rule, but with two additional provisions. One of these provisions, Section 103.21(e), acknowledges (but does not codify) current caselaw addressing application of the voluntary-recognition bar when two or more unions are vying to represent employees, as reflected in *Smith's Food & Drug Centers,* 320 NLRB 844 (1996). The other, Section 103.21(g), codified the Board's view that the paragraphs of Section 103.21 are intended to be severable.[174] As noted earlier,[175] these two actions (rescission of the 2020 rule and adoption of a new rule) are intended to be separate and severable. This portion of the final rule addressing voluntary recognition, in turn, is intended to be severable from the other portions of the final rule rescinding and replacing the portions of 2020 rule that addressed the blocking charge policy and rescinding the portion of the 2020 rule that addressed proof of majority support for labor organizations representing employees in the construction industry. The Board rescinds the 2020 rule because it undermines the sound policies reflected in the voluntary-recognition bar, and does so independently of any legal challenge to the Board's promulgation of the new Section 103.21 codifying *Lamons Gasket.*[176] Below, we address the historical development of the voluntary-recognition bar, the proposed rule and its rationale (which we endorse), the public comments received in response to the NPRM, and the final rule adopted here.

2. The Final Rule

As noted, the final rule rescinds current Section 103.21 of the Board's Rules and Regulations and replaces it with a new provision, which essentially codifies the traditional voluntary-recognition bar as modified in *Lamons Gasket.* The final rule departs from the proposed rule only in adding a provision that specifically addresses the uncommon situation involving rival unions vying to represent the same employees, as presented in *Smith's Food,* supra. The rescission of the current rule and its replacement with a new rule are separate actions and are intended to be severable.[177] In adopting the final rule, the Board has given careful consideration to the public comments on the proposed rule, which are discussed in detail below, following our discussion of the final rule.

Rescinding the current rule eliminates the notice-and-election procedure first established in the *Dana* decision, which represented a sharp break with the traditional voluntary-recognition bar in place—with unanimous judicial support—for more than 40 years (from 1966 to 2007). *Dana* was unprompted.[178] As explained, *Dana* ushered in a new and undesirable era of instability in the law surrounding voluntary recognition: *Dana* was reversed after four years by *Lamons Gasket* (decided in 2011), and *Lamons Gasket,* in turn, was reversed by the 2020 rule, which restored *Dana.* For reasons already explained, we believe (as did the *Lamons Gasket* Board) that *Dana* was a serious misstep. *Dana's* premise—that voluntary recognition is inherently suspect with respect to employee free choice—finds no firm support in the Act. To the contrary, the Act clearly treats voluntary recognition as a legitimate basis for establishing an enforceable bargaining obligation. Moreover, the *Dana* Board's skepticism toward voluntary recognition lacked any empirical basis. The Board's experience under *Dana* showed that following voluntary recognition, employees only very rarely sought an election (despite being notified of their right to do so) and almost never rejected the recognized

[172] See supra fn. 4.

[173] Prior to the 2014 rule, ''the blocking charge policy [wa]s not codified in the [Board's Rules and R]egulations. Rather, it [was] the product of adjudication and [was] described in the non-binding Casehandling Manual[.]'' 79 FR 74418 (''As explained in Sec[.] 11730 of the Casehandling Manual, '[t]he Agency has a general policy of holding in abeyance the processing of a petition where a concurrent unfair labor practice charge is filed by a party to the petition and the charge alleges conduct that would interfere with employee free choice in an election, were one to be conducted.' '') (citations omitted). In our view, that general policy represents a better balance of the Board's statutory interests in protecting employee free choice, preserving laboratory conditions in Board-conducted elections, and resolving questions concerning representation expeditiously than does the April 2020 rule. By contrast, the April 2020 rule at times required regional directors to conduct elections under coercive circumstances. Although the blocking charge policy as it existed prior to the 2014 rulemaking did not require—as this rule does—simultaneous offers of proof and prompt witness availability to speed regional directors' investigation of blocking charges' merits, we nevertheless view the extant policy before the 2014 rulemaking as more faithful to the Board's statutory interests than the April 2020 rule.

[174] Para. (g) recites that ''[t]he provisions of this section are intended to be severable'' and that ''[i]f any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.''

[175] See supra fn. 4.

[176] In the event the promulgation of the new rule codifying *Lamons Gasket* does not survive judicial review, the voluntary-recognition bar would revert to a matter of case-law doctrine, subject to revision through adjudication. Because of the rescission of the 2020 rule, *Lamons Gasket* would be the controlling precedent, insofar as judicially permitted.

[177] As explained below, the Board has concluded that current Sec. 103.21 fails adequately to promote the policies of the Act. Rescinding that provision permits the Board to better promote those policies, whether through new Sec. 103.21 (by codifying *Lamons Gasket,* as the Board prefers) or by returning to adjudication (if necessary, should the new regulatory text be struck down) to address voluntary-recognition bar issues under *Lamons Gasket* and its progeny, as the Board did before adoption of the 2020 rule. All of the reasons that the Board disagrees with current Sec. 103.21 support the decision to rescind it. The decision to rescind current Sec. 103.21 is independent of the decision to adopt new regulatory text in the final rule.

[178] The *Dana* Board did not cite any intervening judicial decision questioning the Board's voluntary recognition-bar doctrine (there were none).

union. Thus, the Board restored the *Dana* procedure despite new evidence (generated by *Dana* itself) strongly suggesting that the procedure was unnecessary to serve its stated purpose of promoting employee free choice. Whether or not the 2020 Board's decision to do so was arbitrary or capricious (and thus impermissible under the Administrative Procedure Act), it was at least questionable as a matter of administrative decision-making. In a case involving the Board, the Supreme Court has observed that the ''constant process of trial and error . . . differentiates perhaps more than anything else the administrative from the judicial process.'' [179] The application of the *Dana* decision from 2007 to 2011 represented a trial of its notice-and-election procedure, which revealed the *Dana* Board's error in treating voluntary recognition as suspect. We believe that the 2020 Board erred in failing to correctly acknowledge what the *Dana* trial period had shown.[180] Not surprisingly, the Board's experience under the 2020 rule now has proved to be entirely consistent with that under *Dana.* There is no apparent empirical reason to treat voluntary recognition with suspicion.[181]

Insofar as the rationale for the 2020 rule was based not on empirical evidence, but instead on a policy preference, we take a different view. The 2020 Board suggested that, whatever the experience under *Dana* had been, the notice-and-election procedure better promoted employee free choice—given the asserted superiority of elections over voluntary recognition as a means of determining employees' desire to be represented or not—and that this benefit was not outweighed by any cost to effective collective bargaining. Our dissenting colleague reiterates this view. For the reasons already explained and set forth below, we do not agree with the 2020 Board's cost-benefit analysis.

To begin, we see no firm support in the Act for testing a union's voluntary recognition by subjecting it to an election as a means of promoting employee free choice, especially in the absence of even an allegation (much less a showing) that recognition was not based on the union's majority support among employees. Section 8(a)(5) of the Act, read together with Section 9(a), makes clear that where a union has been lawfully recognized by an employer, based on its majority support among employees, the union is indisputably the exclusive bargaining representative of employees, with precisely the same bargaining rights and duties as a union certified by the Board following an election.[182] Whatever privileges and protections the Act grants exclusively to certified unions, in this crucial respect—integral to the voluntary-recognition bar—recognized unions are no different than certified unions. Both types of unions have established their representative status legitimately. We are not persuaded that employee free choice is genuinely served by subjecting a recognized union to the requirement that it demonstrate its majority status *again,* before it has had a chance to prove itself to employees through collective bargaining.

The current notice-and-election procedure, as explained, permits a minority of bargaining-unit employees (as few as 30 percent) to require the holding of an election, forcing the union to divert its resources from bargaining to campaigning. As part of that election, a minority of unit employees may oust the union if they are a majority of voting employees. In restoring the *Dana* procedure, the 2020 Board gave far too little weight to the free-choice rights of the employee *majority* whose support made the initial employer recognition of the union lawful. We see no compelling reason why the Board should effectively undercut their choice.[183] Indeed, temporarily insulating the recognized union from challenge until it has had a reasonable opportunity to bargain with the employer promotes *informed* employee free choice. Once the recognition-bar period ends, employees will be able to make their decision as to continued representation based on the union's performance in bargaining (immediately if no collective-bargaining agreement has been reached and, if there is an agreement, following the expiration of the contract-bar period).

We also disagree with the view of the 2020 Board and our dissenting colleague that the notice-and-election procedure does not have a reasonable tendency to interfere with effective collective bargaining. To be sure, current Section 103.21 does not eliminate the voluntary-recognition bar altogether. However, it does defer application of the bar for at least the minimum period specified by the rule: 45 days after the Board notice to employees is posted, assuming no election petition is filed. Of course, the rule also creates the possibility that the voluntary-recognition bar will *never* apply (if a petition is filed, an election is held, and the union is defeated). This framework obviously places the union's status in genuine doubt, as a formal matter.[184] In this way—as Board and

[179] *NLRB* v. *J. Weingarten, Inc.,* 420 U.S. 251, 266 (1975) (quoting *NLRB* v. *Seven-Up Bottling Co. of Miami,* 344 U.S. 344, 349 (1953)).

[180] In particular, we reject the 2020 Board's view (and the view of our dissenting colleague) that the proper focus of the Board, in evaluating its experience with the notice-and-election procedure, should be on the percentage of cases in which, *when an election was sought,* the union was decertified. In our view, the critical fact is that employees very rarely sought an election at all and that the cases in which a recognized union was decertified represent a miniscule percentage of the cases in which a notice was posted following recognition. Even such cases, as we note below, do not demonstrate that the recognized union lacked majority support when it was lawfully recognized by the employer. Contrary to our dissenting colleague, we are not persuaded that we should adhere to the 2020 rule because employees rarely sought elections after the notice was posted. Retaining the notice-and-election procedure entails costs to the Board and to parties, and if those costs are not justified by corresponding benefits, the Board is justified in modifying its procedures.

[181] Experience under *Dana* and/or under the 2020 rule has shown that unions were very rarely decertified after the notice was posted. Moreover, the fact that an election *following* voluntary recognition results in the union's defeat does not necessarily demonstrate that the union lacked reliable majority support *at the time of recognition.*

This conclusion follows for two reasons. First, the election obviously captures employee sentiment at a later date, when it may well have been influenced by intervening events or simply by changing minds. Second, as explained, to be lawful, voluntary recognition requires majority support among bargaining-unit employees as a whole, while an election is determined by a majority of voting employees. Thus, under the current notice-and-election procedure, a *minority* of unit employees could oust a union that, when recognized, was supported by a *majority* of unit employees.

[182] Sec. 8(a)(5) of the Act requires an employer ''to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).'' 29 U.S.C. 158(a)(5). Sec. 9(a), in turn, refers to ''[r]epresentatives *designated* or selected . . . by the majority of the employees'' in an appropriate unit. 29 U.S.C. 159(a) (emphasis added).

[183] The *Lamons Gasket* Board characterized the *Dana* notice-and-election procedure as effectively compromising the Board's neutrality by inviting employees to reconsider their choice of the union. We need not decide whether a reasonable employee could perceive the current notice-and-election procedure this way. Nor do we suggest that the *Dana* Board or the 2020 Board was motivated by hostility toward voluntary recognition. Our focus, rather, is on the debatable, if not dubious, rationales offered for the creation and restoration of the procedure, as well as on the objective tendencies and effects of the procedure on employees.

[184] Based on the Board's administrative experience with the notice-and-election procedure, which shows that unions are almost never decertified following notice-posting, it might be argued that the procedure does not, in fact, cast doubt on the union's status and that employers, unions, and employees understand as much. That argument, however, would confirm that the procedure is only a formality. In that case, the procedure would seem to serve no clear legitimate purpose. Insofar as the notice-and-election procedure is an empty exercise, it amounts at best to a waste of the Board's resources, as well as those of the employer and the union, even apart from the procedure's harm to the collective-bargaining process.

Our dissenting colleague questions whether ''simply posting a *Dana* notice imposes a significant burden on Board resources.'' In framing the resource question this way, our colleague omits reference to the second part of the procedure, which

judicial decisions applying the recognition-bar doctrine and analogous bar doctrines observe [185]—the procedure tends to impede bargaining. The employer may well be less likely to invest time and effort in bargaining if the bargaining process might be terminated soon with the union's defeat in an election.[186] This would especially be true if the employer had second thoughts about voluntarily recognizing the union and hoped to be relieved of its duty to bargain (as productive bargaining could be contrary to the employer's interests).

The notice-and-election procedure also reasonably tends to interfere with effective bargaining from the union's side. Because its representative status is at stake, the union may well feel the need to divert resources away from bargaining to campaigning. At the same time, it may well face or feel pressure to quickly demonstrate good results in bargaining to preserve employee support, as recognized by the Board and the courts in bar-doctrine cases.[187] That pressure on the union might lessen the chances of agreement and instead lead to conflict with the employer—indeed, even to strikes or other workplace disruptions—that could have been avoided, had there been more time to reach compromise. The reasonably likely combined effect of the notice-and-election procedure on collective bargaining seems clear. It creates incentives for employers to move slowly and for unions to move quickly, increasing the chances of conflict, not compromise. This is not a good way to promote the practice and procedure of collective bargaining, as the Act intends.

We acknowledge that there likely can be no more than anecdotal evidence that the notice-and-election procedure, in fact, interferes with effective collective bargaining. The Board has no statutory role in monitoring the national collective-bargaining process, as opposed to adjudicating individual cases involving the duty to bargain if and when they come to the Board. Even in a rulemaking proceeding, the Board is largely limited by the information presented to it. It seems implausible that employers who have bargained less diligently than they might have because of the current procedure would advise the Board as such and equally implausible that unions who have overreached in bargaining to protect their representative status and generated avoidable labor disputes would share that information.

In our view, as explained, the notice-and-election procedure has little, if any, demonstrable benefit in promoting employee free choice, while imposing administrative costs on the Board and compliance costs on employers.[188] Any potential benefit to employee free choice is (in our policy judgment) outweighed by, at least, the potential harm to effective collective bargaining, as described. We thus make a different policy choice than the 2020 Board, which concluded that the potential benefit of the Section 103.21 procedure outweighed any potential harm, while essentially treating the Board's administrative experience as irrelevant. We similarly disagree with our dissenting colleague's assessment of the relative costs and benefits of the Section 103.21 procedure.

Based on that policy choice, the Board's final rule rescinds current Section 103.21, which fails to genuinely promote employee free choice, threatens to interfere with effective collective bargaining, and wastes the Board's administrative resources. The final rule also codifies the traditional voluntary-recognition bar, as refined in *Lamons Gasket,* by newly defining the reasonable period for collective bargaining that sets the duration of the bar. This separate and severable step is intended to provide greater stability in this area of labor law than would returning to case-by-case adjudication. As noted, the *Dana* decision (resurrected by the 2020 rule) upset what had been well-established Board law for more than 40 years, and then was properly overruled by *Lamons Gasket.*

Given the federal courts' universal approval of the traditional voluntary-recognition bar, in decisions spanning decades, we believe that codifying the doctrine is well within the Board's authority to interpret the Act and to promulgate rules necessary to carry out its provisions, as contemplated by Section 6 of the Act.[189] As explained, the traditional voluntary-recognition bar doctrine appropriately treats the newly established bargaining relationship between the recognized union and the employer as worthy of initial protection, because it is based on a legitimate expression of employee free choice sanctioned by the Act and because doing so promotes effective collective bargaining. The voluntary-recognition bar insulates the union from challenge, but only for a limited time, *i.e.,* a reasonable period for collective bargaining, mitigating its impact on employee free choice. The refinement made by *Lamons Gasket*—which defined the reasonable period for collective bargaining (setting minimum and maximum lengths while incorporating an existing multifactor test for fixing the bar period in a particular case)—brings greater clarity and certainty to the recognition-bar doctrine, providing better guidance for employees, unions, and employers and facilitating its fair and consistent application by the Board.

Consistent with *Lamons Gasket,* we have chosen not to extend the final rule to cover unfair labor practice cases (*e.g.,* where it is alleged that an employer violated its statutory duty to bargain by unilaterally—not on the basis of a Board election or order—withdrawing recognition from a voluntarily recognized union before a reasonable period for bargaining had elapsed). This decision leaves the Board free to continue to apply the voluntary-recognition bar in such circumstances through adjudication, if and as cases arise, consistent with the Board's traditional approach to the issue.[190] It

may require the Board to conduct an election. Perhaps anticipating this argument, our colleague further argues that any expenditure of agency resources is justified, since ''[t]here is hardly a more important use of the Board's resources than to protect employees' fundamental statutory rights.'' We cannot agree with our colleague's tacit view that it better protects employees' fundamental statutory rights to maximize the opportunity for a minority of unit employees to overcome the prior selection of a union by the majority of employees. The statute protects employees' fundamental right ''to bargain collectively through representatives of their own choosing,'' including through their ''designated *or* selected'' representatives. 29 U.S.C. 157 & 159(a) (emphasis added). In addition, and contrary to our dissenting colleague, we find it entirely appropriate to consider the waste of party resources in deciding that the notice-and-election procedure, on balance, entails more costs than benefits.

[185] See, *e.g., NLRB* v. *Universal Gear Service Corp.,* supra, 394 F.2d at 398 (upholding Board's application of voluntary-recognition bar; citing Supreme Court's decision in *Brooks* v. *NLRB,* supra, approving certification-year bar; and endorsing Board's statement that ''only if the parties can rely on the continuing representative status of the lawfully recognized union, at least for a reasonable period of time, can bargaining negotiations succeed and the policies of the Act be effectuated'').

[186] To be sure, the employer has a statutory duty to bargain in good faith with the union from the time it voluntarily recognizes the union. The issue, however, is not whether the current notice-and-election procedure relieves the employer of this duty, but whether the procedure creates a situation in which employers might reasonably tend to bargain less diligently than they would absent the procedure.

[187] See, *e.g., NLRB* v. *Universal Gear Service Corp.,* supra, 394 F.2d at 398 (quoting Supreme Court's observation in *Brooks* v. *NLRB,* supra, that ''[a] union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hothouse results or be turned out'').

[188] See supra fn. 185.

[189] We are of the same view with respect to the rescission of the current rule.

[190] As explained, the Board first established the voluntary-recognition bar in an unfair labor practice

Continued

also permits the Board to consider, in future appropriate cases, issues related to the propriety of employer unilateral withdrawals of recognition more generally and not simply when such a withdrawal follows voluntary recognition.

Finally, the Board has decided to acknowledge, but not codify, the caselaw rule of *Smith's Food,* supra, which permits a union to file and proceed with a representation petition if, at the time the employer voluntarily recognized a rival union, the petitioner union had already obtained a sufficient showing of interest to support a petition. This approach leaves the law in this area unchanged (as *Lamons Gasket* did) and allows any modifications to it to be made through case-by-case adjudication. We believe that this approach, providing flexibility and permitting the Board to consider the particular circumstances in which the *Smith's Food* issue arises, is better suited to address this uncommon situation.

3. Response to Public Comments on Proposed Rule

The Board received many public comments addressing the proposed rule, and we have considered them carefully. Likewise, we have carefully considered the view of our dissenting colleague. The issues implicated by the proposed rule are largely familiar to the Board and the public, given the recent history of the voluntary-recognition bar. These issues were debated in the Board's divided decision in *Dana* (2007), in the *Lamons Gasket* decision (2011) that overruled *Dana,* and in the rulemaking that culminated in the 2020 rule, which we rescind and replace.

A number of commenters expressed their support for the proposed rule and urged the Board to implement the proposal without any modifications.[191] Commenters who opposed the proposed rule largely raised arguments that were made by the Board's *Dana* majority, rejected by the *Lamons Gasket* majority, and then embraced by the 2020 Board. The common thread of many comments opposing the new rule and rescission of the 2020 rule is the claim that voluntary recognition does not reliably reflect majority support for union representation among employees, such that the current notice-and-election procedure serves as a necessary and appropriate check on voluntary recognition. These comments assert the superiority of Board elections over union-authorization cards and other recognized, alternative means by which employees may designate a union to represent them under the Act. The comments cite various features that, in their view, favorably distinguish elections from these alternative means of establishing majority support. Our dissenting colleague also takes this position.

We address these comments and the view of our dissenting colleague below. As we explain, they do not persuasively come to terms with the key points already examined here, which support restoring the traditional voluntary-recognition bar: The National Labor Relations Act explicitly provides that employees may designate a union to represent them by means *other* than a Board election. Temporarily protecting a new bargaining relationship established through voluntary recognition—as other new or restored relationships are protected by analogous bar doctrines—promotes effective collective bargaining, as the federal courts have uniformly recognized. Finally, the Board's experience with the notice-and-election procedure, under both *Dana* and the 2020 rule, shows that the procedure is not necessary to preserve employee free choice. The Board's experience under *Dana* and the 2020 rule provides no basis for viewing voluntary recognition as less reflective of employees' free choice in favor of union representation. Contrary to comments opposing the rule, we see no overriding reason to treat voluntary recognition as suspect and to preserve current Section 103.21 as a check on that statutorily sanctioned practice.

In addition to examining comments and the views of our dissenting colleague opposed to the proposed rule, we also consider comments addressing three issues on which the NPRM specifically invited comment: (1) whether to extend the final rule to cover unfair labor practice cases; (2) whether to modify the proposed definition of the reasonable period for collective bargaining; and (3) how to address the situation presented in *Smith's Food,* where multiple unions are vying to represent the same employees and the employer voluntarily recognizes one union when another has sufficient support to seek a Board election.

a. Comments Regarding the Asserted Superiority of Board Elections To Effectuate Employee Free Choice

Our dissenting colleague, along with commenters opposing rescission of the 2020 rule and adoption of the proposed rule, contend that the process by which voluntarily recognized unions demonstrate their majority support is unreliable and/or inferior to the Board's election process.[192] They point to judicial decisions such as *Gissel Packing Co.,* supra, 395 U.S. 575, which they assert hold that elections are the superior method for determining questions of representation, and to Section 9(c)(3) of the Act, which provides that no new Board election may be conducted for one year following an election.[193]

We see no support for our colleague and the commenters' position in the Supreme Court's *Gissel* decision. If anything, the opposite is true. The issue there was whether the Board could order an employer, whose serious unfair labor practices had made a fair election unlikely, to bargain with a union that had demonstrated its majority support through authorization cards. In upholding the Board's authority, the Court decisively rejected both the argument that the Act permitted only unions chosen in Board election to represent employees [194] and the argument that authorization cards were inherently unreliable to establish the union's majority support.[195]

To be sure, the *Gissel* Court observed that ''[t]he Board itself has recognized . . . that secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.'' [196] This observation must be understood in context, however. The

case in 1966. See *Keller Plastics Eastern,* supra, 157 NLRB 583. See also *Universal Gear Service Corp.,* supra, 157 NLRB 1169.

[191] See comments of AFL–CIO; AFSCME; CAP; EPI; NNU; SEIU; USW.

[192] E.g., comments of CDW; Chamber; Chairwoman Virginia Foxx; NRTWLDF.

[193] Sec. 9(c)(3) recites in relevant part: ''No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held.'' 29 U.S.C. 159(c)(3).

[194] 395 U.S. at 595–600. Citing the language of Sec. 8(a)(5) and Sec. 9(a) of the Act, the Supreme Court observed that it had ''consistently accepted th[e] interpretation'' of the Act that a union was ''not limited to a Board election'' to establish its representative status, but rather ''could establish majority status by other means,'' including employee-signed authorization cards. Id. at 596–597.

[195] Id. at 601–605. The Court squarely rejected what it identified as the two principal arguments attacking the reliability of authorization cards in the context of issuing bargaining orders:

(1) that, as contrasted with the election procedure, the cards cannot accurately reflect an employee's wishes, either because an employer has not had a chance to present his views and thus a chance to insure that the employee choice was an informed one, or because the choice was the result of group pressures and not individual decision made in the privacy of a voting booth; and (2) that quite apart from the election comparison, the cards are too often obtained through misrepresentation and coercion which compound the cards' inherent inferiority to the election process.

Id. at 602 (footnote omitted). The Court observed that ''[n]either contention is persuasive.'' Id.

[196] Id. at 602 (footnote omitted).

Court upheld the Board's authority to issue a bargaining order when a union had established majority support through alternative means. In turn, the Court plainly was not questioning the long-established practice of voluntary recognition, where an employer has chosen to recognize the union, rather than being ordered by the Board to do so. Nothing in the Court's observation suggests that the Board had ever treated voluntary recognition as inherently suspect or affirmatively disfavored. Indeed, the voluntary-recognition bar was Board law when *Gissel* was decided in 1969, and no federal court has since questioned that doctrine, whether based on *Gissel* or otherwise. *Gissel,* then, provides no persuasive reason for adopting the current notice-and-election procedure, as the Board did in 2007, or for preserving that procedure now.[197]

Nor do we see Section 9(c)(3) of the Act as providing such a rationale. As the Supreme Court explained in *Brooks* v. *NLRB,* supra, that statutory provision was added in 1947 to address the fact that a union, having lost a Board election, ''could begin at once to agitate for a new election.'' [198] Section 9(c)(3), then, does not speak directly to the issue addressed by the Board's bar doctrines, the need to temporarily protect new or restored bargaining relationships to promote effective collective bargaining. The Board's certification-year bar, ordinarily insulating a Board-certified union from challenge for one year, pre-dates Section 9(c)(3), and it was upheld by the Court in *Brooks,* which did not rest its decision on that provision, but rather on the pro-bargaining rationale offered by the Board.[199] As we have explained, the certification-year bar served as a model for the voluntary-recognition bar; the Board adopted the bar and the federal courts endorsed the bar after looking to the Court's decision in *Brooks* as support.

Commenters also point to several practical reasons why, in their view, union demonstrations of majority support tend to be less reliable than Board elections.[200] For example, the Coalition for a Democratic Workforce cites the nonpublic character of union solicitations, the potential lack of any involvement by an opposing entity and/or the absence of contrary information, the lack of any Board policing of card solicitation, and the potentially protracted period over which cards are solicited.[201] The National Right to Work Legal Defense Fund points to examples where a union secured a card majority but ultimately lost an election even though the employer was bound by a neutrality agreement and did not oppose union representation.[202]

These comments, in our view, fail to justify preserving the current notice-and-election procedure. Even assuming that the features of an election that distinguish it from certain alternative means of demonstrating a union's majority support make an election closer to the ideal expression of free choice, this possibility does not mean that alternative means of demonstrating majority support are generally unreliable or, in particular, insufficiently reliable to support the traditional voluntary-recognition bar.[203] The reasons should be clear. First, the Act itself treats alternative means of demonstrating majority support as sufficient to establish a union's representative status and the employer's corresponding duty to bargain, as confirmed by the Supreme Court.[204] Second, to serve as a basis for the union's representative status, these alternative means must demonstrate majority support among bargaining-unit employees as a whole—in contrast to a Board election, where a union need only win a majority among voting employees. Third, the Board's administrative experience with the notice-and-election procedure demonstrates that employees almost never reject the recognized union; in the overwhelming majority of cases, they never seek an election in the first place. As already explained,[205] that a union might lose an election despite having earlier been able to demonstrate majority support does not necessarily prove that the union lacked majority support to begin with (even assuming that it was a majority of bargaining-unit employees who voted against the union in the election). Intervening events, or even a simple change of mind among a determinative number of employees, may well explain the union's election loss.[206]

Some commenters opposed to the proposed rule point to the specific privileges and protections granted by the Act to Board-certified unions, but not to voluntarily recognized unions, to argue that recognized unions are less worthy of temporary insulation from challenge and thus that the current notice-and-election procedure is appropriate.[207] We disagree. That the

[197] As noted above, long after the close of the comment period, the Board issued its decision in *Cemex Construction Materials, Pacific, LLC,* supra, 372 NLRB No. 130, holding that an employer violates Sec. 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as the Sec. 9(a) representative by the majority of employees in an appropriate unit unless the employer promptly files an RM petition pursuant to Sec. 9(c)(1)(B) of the Act to test the union's majority status or the appropriateness of the unit, assuming that the union has not already filed an RC petition pursuant to Sec. 9(c)(1)(A). Id., slip op. at 25–26 & fn. 141. No commenter has requested the Board to reopen the comment period for the purpose of addressing *Cemex.*

[198] 348 U.S. at 100 (footnote omitted).

[199] Id. at 100–102.

[200] See comments of Chairwoman Foxx; NRTWLDF. Chairwoman Foxx specifically points to the potential for union abuses in the gathering of signatures and/or documented examples of such abuses. We address her comments below.

[201] Comments of CDW. Rachel Greszler argues in her comment that workplace turnover may make voluntary recognition an invalid gauge of employee sentiment, as the employee complement that initially chose a union may dramatically change over the bar period. See comments of Rachel Greszler. But this observation overlooks the fact that employee turnover is a reality of the workplace, whether a union wins representation rights through voluntary recognition or an election. Thus, although the voters in a Board election may all be employed as of that date, any number of those voters could leave their employment before a Board certification issues or bargaining actually begins, particularly if the Board's certification is challenged. Indeed, under Board law, a certified or recognized union enjoys a continuing presumption of majority support, conclusive during certain periods and rebuttable otherwise, no matter how much time has passed. See *Levitz Furniture Co. of the Pacific,* supra, 333 NLRB at 720 & fns. 16, 17. See also *Fall River Dyeing & Finishing Corp.* v. *NLRB,* 482 U.S. 27, 37–39 (1987) (describing the Board's presumptions of majority support as serving the Board's permissible policy decision to promote stable collective-bargaining relationships).

[202] Comments of NRTWLDF.

[203] See *Gissel,* 395 U.S. at 602. There, as explained, the Supreme Court noted the Board's view that ''secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support,'' but upheld the use of authorization cards as the basis for establishing a union's majority support and issuing a bargaining order against an employer who had committed unfair labor practices interfering with the possibility of a free election. Id. at 601–605, 610. The Court cited the Board's decision in *Aaron Brothers Co. of California,* 158 NLRB 1077 (1966), where the Board observed that ''an election by secret ballot is normally a more satisfactory means of determining employees' wishes, *although authorization cards signed by a majority may also evidence their desires.*'' 158 NLRB at 1078 (emphasis added).

[204] See *Gissel,* 395 U.S. at 602–606.

[205] See supra fn. 181 & 182.

[206] The Act certainly does not require a voluntarily recognized union to demonstrate majority support more than once—whether through an election or otherwise—before it can achieve representative status, any more than it requires a union to win multiple elections before being certified, even if such a requirement would increase opportunities for employees to exercise free choice in some sense.

[207] See, *e.g.,* comments of NRTWLDF. As explained previously, these statutory benefits include Sec. 9(c)(3)'s bar on elections for a 12-month period; the protection against recognitional picketing by rival unions under Sec. 8(b)(4)(C); the right to engage in certain secondary and recognitional activity under Sec. 8(b)(4)(B) and 7(A); and, in certain circumstances, a defense to allegations of unlawful jurisdictional picketing under Sec. 8(b)(4)(D). Neither the proposed rule nor the final rule purport to extend these statutory privileges and protections to recognized unions, of course.

Act grants unique benefits to certified unions does not alter the fact that the Act permits recognized unions to become the exclusive bargaining representative of employees. It is that status which the voluntary-recognition bar protects in order to promote effective collective bargaining. The Act's pro-bargaining policy applies no matter how a bargaining relationship is lawfully established. We reject the view that because the Act distinguishes between certified and recognized unions in specified and limited ways, the Board should broadly disadvantage recognized unions as current Section 103.21 does, for no compelling reason.[208] Such an approach, as we have observed, is contrary to the teaching of the Supreme Court.[209] We do not say, however, that certified unions and recognized unions must be treated identically in every respect. Thus, the voluntary-recognition bar as codified in the final rule is distinct from the existing bar doctrine applicable to certified unions. Under the certification-year bar doctrine, as noted, the bar period is ordinarily one year, absent special circumstances. Pursuant to the final rule adopted, in contrast, the reasonable period for bargaining that defines the voluntary-recognition bar period may be as short as six months and may never be longer than one year (measured from the start of bargaining), depending on specific factors to be applied case-by-case.[210]

[208] The benefits granted to certified unions should not be understood as disadvantages imposed on voluntarily recognized unions, but rather as benefits bestowed on unions that obtain certification through a Board election. Notably, Board law has long permitted a recognized union to file a representation-election petition and to become certified by the Board if it wins the election. See *General Box Co.,* 82 NLRB 678, 682–683 (1949).

[209] See *United Mine Workers,* supra, 351 U.S. at 73 (the Act's specified advantages for a union's compliance with certain statutory requirements implied that noncompliance did not result in any additional consequences).

[210] Because the voluntary-recognition bar is designed to facilitate bargaining by temporarily insulating the recognized union from challenge, the duration of the bar is based on a reasonable period for collective bargaining. That period is logically defined as beginning with the parties' first bargaining session. It follows that the bar period may extend for more than a year *following the date of voluntary recognition,* if the parties do not begin bargaining on the date of recognition. However, it seems reasonable to believe that delays in the start of bargaining are unlikely when the parties have entered into the bargaining relationship voluntarily and presumably both wish to reach a collective-bargaining agreement promptly. NRTWLDF points out that under Sec. 9(c)(3), the bar on a new election runs for one year from the date of a valid election. See comments of NRTWLDF. That statutory provision has no bearing here, however. Looking to the analogous certification-year bar, meanwhile, reveals that if the start of bargaining is delayed by litigation over the propriety of the union's victory, the one-year bar period also does not start to run until bargaining actually begins. See *Volkswagen Group of America Chattanooga Operations, LLC,* 367 NLRB No. 138, slip op. at 1 (2019) (''Where an employer exercises its right to pursue judicial review of a certification, the certification year will begin with the first bargaining session held following court enforcement of the Board's order.'').

CDW and NRTWLDF point out that, if a collective-bargaining agreement is reached within the voluntary-recognition bar period, then the Board's contract-bar doctrine would come into play, adding a separate three-year bar on the filing of election petitions. See comments of CDW; reply comments of NRTWLDF. The same is true, however, if a contract is reached during the certification-year bar period. In both situations, of course, collective bargaining has succeeded, as the Act envisions. Nonetheless, the contract bar is separate from the voluntary-recognition bar and is beyond the scope of the current rulemaking.

b. Comments Concerning Fraudulent or Coercive Conduct by Unions

Some commenters opposing the proposed rule argue that voluntary recognition is an unreliable indicator of a union's majority support because of fraudulent or coercive conduct by unions in obtaining the evidence necessary to demonstrate that support. This asserted conduct includes union intimidation of employees, harassment, and deception as to the nature of the authorization cards or other instruments employees are asked to sign to demonstrate support. For example, Representative Virginia Foxx, the Chairwoman of the House Committee on Education and the Workforce, cites to congressional testimony on union solicitation of authorization cards using false pretenses and high-pressure tactics to obtain employee signatures.[211] We are not persuaded by these comments that voluntary recognition is inherently suspect or that the Board's current notice-and-election procedure is necessary as a check to ensure that recognized unions do, in fact, have uncoerced majority support.

Had Congress believed that voluntary recognition was often tainted by union misconduct in securing majority support among employees, the Act presumably would not have made it possible for a union to establish its representative status through means other than a Board election. As we have repeatedly observed, however, the Act explicitly does provide for this alternate path. In this respect, commenters' quarrel is less with the proposed rule than with the Act itself. In *Gissel,* the Supreme Court not only confirmed the Act's plain meaning, but also rejected the argument that union-authorization cards could not properly establish a union's majority support. The Court was not persuaded that cards were suspect because ''an employee may, in a card drive, succumb to group pressures or sign simply to get the union 'off his back,'" noting that the ''same pressures are likely to be equally present in an election.'' [212] The Court in turn rejected the ''complaint, that [authorization] cards are too often obtained through misrepresentation and coercion,'' citing the ''Board's present rules for controlling card solicitation,'' which the Court ''view[ed] as adequate to the task where the cards involved state their purpose clearly and unambiguously on their face.'' [213]

The current notice-and-election procedure applies in all cases of voluntary recognition, regardless of whether there is any reason to doubt the union's majority support. The procedure does not require even an allegation that the union's demonstration of majority support was deficient in any respect. Moreover, as we have explained, the procedure is unnecessary to serve as a check on the legitimacy of the union's majority support. Most obviously, in any particular case, the legality of an employer's voluntary recognition of a union is open to challenge under the Act's unfair labor practice provisions, as administered by the Board. As explained, an employer violates Section 8(a)(2) of the Act when it voluntarily recognizes a union that does not, in fact, have uncoerced majority support, and the minority union correspondingly violates Section 8(b)(1)(A) by accepting recognition if it does not enjoy majority support.[214] The Board has been unequivocal that ''unlawful conduct involved in the solicitation of the cards, including threats, interrogations, surveillance, and promises of benefits . . . . supports a reasonable inference that the claimed card majority was tainted.'' [215] Board cases make clear that union misrepresentation of the nature of authorization cards and the use of threats to secure card signatures are unlawful and that such misrepresentations will invalidate the authorization card.[216] One commenter opposing the proposed rule, the HR Policy Association, raises the concern that voluntary recognition may be the

[211] Comments of Chairwoman Foxx.

[212] 395 U.S. at 603–604.

[213] Id. at 604.

[214] See *Lamons Gasket,* supra, 357 NLRB at 746–747 (citing *Bernhard-Altmann,* supra, 366 U.S. at 738, and *Dairyland USA Corp.,* 347 NLRB 310, 313–314 (2006), enfd. 273 Fed. Appx. 40 (2d Cir. 2008)).

[215] *Dairyland USA,* supra, 347 NLRB at 313.

[216] See, *e.g., Cumberland Shoe Corp.,* 144 NLRB 1268, 1268 (1963) (union authorization card invalid if organizer misrepresents the card's nature or purpose), enfd. 351 F.2d 917 (6th Cir. 1965); see also *Clement Bros.,* 165 NLRB 698, 699, 707 (1967) (union adherents' coercion or misrepresentation in card solicitation may violate Sec. 8(b)(1)(A) of the Act and invalidate majority showing), enfd. 407 F.2d 1027 (5th Cir. 1969).

product of improper dealings between a union and an employer.[217] This concern, too, can be redressed in a particular case, through Section 8(a)(2) of the Act, which (as explained) expressly prohibits an employer from ''dominat[ing] or interfer[ing] with the formation or administration of any labor organization or contribute financial or other support to it.'' 29 U.S.C. 158(a)(2).

One commenter discounts the value of the Act's unfair labor practice provisions as a check on union misconduct related to voluntary recognition, asserting that filing and pursuing unfair labor practice charges with the Board is burdensome on employees, who must depend on the General Counsel and the Board's regional offices to investigate a charge to determine its merit, issue a complaint, and pursue a case before the Board.[218] This, of course, is the process that Congress has established to protect employees' rights under the Act. By definition, then, it must be deemed adequate to serve the Act's purposes in the current context. The Supreme Court's decision in *Gissel,* in turn, implicitly endorsed the Board's ability to effectively administer the Act in all relevant respects. The Act provides ample opportunity for employees and their supporters to seek redress for union or employer misconduct in connection with the voluntary-recognition process. As observed in *Lamons Gasket,* any person may file an unfair labor practice charge with the Board, up to six months after the alleged union misconduct or the unlawful voluntary recognition of the union by the employer.[219]

Relatedly, a commenter asserts that filing election objections in a representation case is a more effective means of protecting employee free choice than an unfair labor practice charge.[220] We are not persuaded by this assertion. For reasons already explained, the Act's unfair labor practice provisions are adequate to ensure the integrity of voluntary recognition. Congress authorized voluntary recognition as a means for unions and employers to establish a bargaining relationship, and concomitantly established unfair labor practices to prevent conduct that might taint the creation of such a relationship. Where a union files an election petition, in contrast, the Board's representation-case procedures and standards of election conduct apply (in addition to the unfair labor practice provisions of the Act). In short, these alternative routes to representation are appropriately governed by their own sets of rules. Even if the Act's unfair labor practice procedures and standards were somehow inferior to those governing representation cases,[221] that fact would be immaterial because the Act does not require unions to invoke the Board's representation procedures.

c. Comments Regarding the Lack of Parallel Legal Treatment of Voluntary Recognition and Withdrawal of Recognition

Commenter NRTWLDF argues that employers and unions can easily establish bargaining relationships through voluntary recognition, while employers' efforts to unilaterally withdraw recognition are more difficult. This commenter argues that this inequity would be worsened by the proposed rule.[222] NRTWLDF chiefly argues that there are complex sets of rules governing employer involvement in any withdrawal of recognition solicitations and regarding when and where such evidence may be solicited by employees, while voluntary recognition is subject to far less scrutiny. Putting aside the issue of whether NRTWLDF has accurately characterized Board law, we disagree that voluntary recognition and unilateral withdrawals of recognition—despite both turning on whether a union has (or continues to have) majority support—are equivalent. The Board has never treated them as such. Rather, each practice involves its own legal and policy issues under the Act, which merit separate consideration. For example, no provision of the Act clearly authorizes employers to withdraw recognition from a certified or recognized union without an election, nor has unilateral withdrawal of recognition ever been deemed a favored element of national labor policy. The present rulemaking is thus appropriately confined to the issue of voluntary recognition, just as the 2020 rulemaking was.

d. Comments Concerning the Impact on Collective Bargaining of the 2020 Rule

In response to the Board's invitation, various commenters addressed the question of whether and what evidence there was to suggest that the 2020 rule had negatively affected the ability of voluntarily recognized unions and employers to engage in productive collective bargaining by subjecting unions to potential challenges to their representative status. In *Lamons Gasket,* the Board had pointed to its own experience demonstrating that a notice-posting procedure is likely to delay and distort bargaining.[223] Comments supporting the proposed rule chiefly argue that, as a matter of logic and experience, bargaining will be harmed; [224] however, they do not bring significant empirical evidence to bear. We take note of some of the burdens commenters have pointed to, but for reasons already explained, we believe that recission of the 2020 rule reflects the better policy choice. Contrary to our dissenting colleague's view, we believe that the 2020 rule has a reasonable tendency to harm the bargaining process and that, in any case, the current notice-and-election procedure does not serve its ostensible purpose of promoting employee free choice. The procedure thus has no clear benefit that would outweigh its potential for harm.

The AFL–CIO suggests that the practical effect of the notice period is that employers will delay bargaining until after the 45-day posting period prescribed in the 2020 rule.[225] It also refers to union briefs and academic modeling cited in the *Lamons Gasket* decision, which suggest that uncertainty as to the duration of the union's status will cause collective bargaining to be less cooperative.[226] The Los Angeles County Federation of Labor points to the experience of UNITE HERE Local 11, which—under the 2020 rule—had to divert resources from bargaining to defend against a decertification petition (which was ultimately unsuccessful). It also points to academic studies and other experience suggesting that delays in the consummation of an agreement may lead to substantively worse terms.[227] SEIU also asserts, as a logical proposition, that unions and employers will avoid the path of voluntary recognition if they believe it is fraught and less likely to yield positive collective-bargaining outcomes.[228] And of course, as some commenters observed, there are administrative costs

[217] See comments of HRPA.

[218] See reply comments of NRTWLDF.

[219] 357 NLRB at 746–747.

[220] See reply comments of NRTWLDF.

[221] This is not clearly the case, as the *Lamons Gasket* Board pointed out, in part because the representation-case process emphasizes speed. 357 NLRB at 747. An election objection must be filed with seven days of the tally of ballots, by a party to the election, while an employee (or any other person) may file an unfair labor practice charge as long as six months after the alleged misconduct. Id.

[222] Comments of NRTWLDF.

[223] 357 NLRB at 747 & fn. 32.

[224] See, *e.g.,* comments of AFL–CIO; AFSCME; GC Abruzzo; LA Federation; SEIU; USW.

[225] See comments of AFL–CIO.

[226] See id. (citing 357 NLRB at 747 fn. 30).

[227] Comments of LA Federation.

[228] Comments of SEIU.

imposed on the regions and the parties to request, furnish, and post notices.[229]

These assertions from commenters align with the logical expectations of how the 2020 rule's notice-posting requirement tends to affect bargaining relationships, as well as the Board's own experience as laid out in *Lamons Gasket*.[230] It seems fair to conclude, as a matter of experience and academic modeling, that the current notice-and-election procedure has a reasonable tendency to influence the trajectory of bargaining. Employers might well refuse to invest the same time and effort into bargaining if the bargaining relationship might soon be terminated. Unions, in turn, might feel pressure to quickly produce positive results in bargaining to avoid losing support among employees—making a mutually satisfactory agreement with the employer more difficult and increasing the likelihood of labor disputes. These concerns, of course, animate the voluntary-recognition bar and other bar doctrines, including the certification-year bar endorsed by the Supreme Court.[231]

e. Comments on FOIA Data and Updated FOIA Data Reflecting Experience Under 2020 Rule

Numerous commenters have remarked on the Board data reflecting experience under the 2020 rule, produced under FOIA, cited in the NPRM. As we explained in the NPRM, after ''the Board's rule went into effect on June 1, 2020,'' the Board ''[i]n response to a series of Freedom of Information Act requests, . . . has compiled and disclosed data that reflects its experience under the rule,'' tabulating employer requests for notices under the 2020 rule and whether a petition was subsequently filed. 87 FR 66898. Opponents of the proposed rule generally express the view that even the slightest indication that employees in some cases might not wish to retain a voluntarily recognized union is sufficient justification for the 2020 rule's procedure.[232] Supporters, meanwhile, take the view that this data overwhelmingly shows there is no need for the 2020 notice-and-election procedure, and that the successful track record of voluntary recognition justifies treating it as a valid expression of employee choice.

As noted earlier, we believe the Board's experience with the 2020 rule clearly does not compel the conclusion that the rule is necessary to protect employee free choice. In any case, even if the administrative data pointed to no firm conclusions about the need for the current rule, we would still rescind the rule as a matter of policy for the reasons we have explained.

Many commenters opposed to the rule argue that the current notice-and-election procedure is justified if it ever results in a recognized union being decertified. We disagree, for reasons already explained. That a recognized union loses a subsequent election—and this has occurred only in a tiny number of cases where the required notice was posted (both under *Dana* and under the current rule)—does not demonstrate that the union lacked majority support at the time it was recognized. Rather, that result may well be explained by intervening events or by a simple change of mind among employees. Recall, too, that an election is decided by a majority of voting employees, while lawful recognition requires majority support by bargaining unit employees as a whole. Of course, even two free and fair elections held in quick succession may produce different results if enough voters suddenly change their minds, but that is no reason to discard the critical role of bargaining stability in the administration of the Act.

f. Comments That the Notice-and-Election Procedure Compromises the Board's Neutrality

Commenter AFL–CIO, joined by other commenters including National Nurses United, argues that the notice-posting requirement of current Section 103.21 compromises the Board's neutrality because it informs employees of their right to reject the recognized union and effectively invites them to exercise that right.[233] These commenters point out that in this respect, the Board treats voluntary recognition differently. Unless an unfair labor practice has been committed or an election has been scheduled, the Board does not currently require that employees be advised of their statutory rights with respect to union representation. The AFL–CIO, joined by other commenters, further argues that the 2020 Board, by not addressing comments raising the neutrality issue, violated the Administrative Procedure Act when it adopted current Section 103.21.

In rescinding the 2020 rule and replacing it with a new rule, we need not and do not rely on these arguments, but rather on the reasons already offered here, which we regard as ample justification for this rule's steps.[234] Irrespective of whether the 2020 rule was adopted in accordance with the Administrative Procedure Act, we disagree with the policy choice reflected by the 2020 rule. We make a different policy choice here.

g. Comments Addressing the Definition of the Reasonable Period for Bargaining

Several commenters take issue with the proposed rule's definition of the reasonable period for bargaining, which establishes the length of the voluntary-recognition bar. As noted, the proposed rule defined this reasonable period as ''no less than 6 months after the parties' first bargaining session and no more than 1 year after that date,'' and provided that, ''[i]n determining whether a reasonable period of time for collective bargaining has elapsed in a given case, the following factors will be considered: (1) [w]hether the parties are bargaining for an initial collective-bargaining agreement; (2) [t]he complexity of the issues being negotiated and of the parties' bargaining processes; (3) [t]he amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) [t]he amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) [w]hether the parties are at impasse.'' 87 FR at 66933.

NRTWLDF argues that defining the period this way imposes an undue burden on employees opposed to union representation, who are likely to have difficulty assessing the duration of the period under the multifactor approach of the proposed rule.[235] We are not persuaded by this argument. To begin, the final rule (in line with the proposed rule) restores the definition first adopted in *Lamons Gasket* in 2011. Before then, Board law did not define the reasonable period for collective bargaining at all in the context of voluntary recognition. In bringing greater clarity and certainty to the law, then, the final rule speaks to the concern of NRTWLDF. Employees

[229] Although, as CDW suggests in its comment, see comments of CDW, these costs may be small, any small or theoretical harms must be balanced against the lack of any meaningful benefits of imposing a notice procedure as a prerequisite to the voluntary-recognition bar.

[230] *Lamons Gasket,* 357 NLRB at 747 & fn. 32.

[231] Id. at 744 (citing *Brooks* v. *NLRB,* supra, 348 U.S. at 100).

[232] Commenter CDW argues that if one interprets the data as the NPRM does—showing minimal impact on unions' status—then it makes no sense to upset the status quo of the 2020 rule because the rule has not negatively affected unions' representational status. Comments of CDW. As we have explained, given the lack of justification for a rule that imposes a needless hurdle to bargaining, even potential obstacles to productive bargaining should be avoided.

[233] Comments of AFL–CIO; NNU.

[234] In this respect, we neither adopt nor reject the reasoning of *Lamons Gasket.* See 357 NLRB at 743–744 (concluding that *Dana* notice-and-election procedure compromised the Board's neutrality).

[235] Comments of NRTWLDF.

know, at a minimum, that the recognized union's representative status may not be challenged before six months but may be challenged after one year. Between those minimum and maximum lengths, the duration of the voluntary-recognition bar will necessarily vary from case to case, based upon the factors identified.

But the alternative to a factor-based approach is to draw a bright line fixing the length of the bar that would apply in every case (unless the Board maintained its traditional approach of not defining the length of the bar at all). We do not believe that a bright-line rule would be superior. It would require the Board to treat all cases as if they were the same, when it seems clear that each case presents particular circumstances justifying a shorter or longer bar period, within the minimum and maximum lengths established. We believe that the definition of the reasonable period for bargaining that we adopt—incorporating a standard that already exists in Board law addressing an analogous bar period—reflects a sound balance between competing considerations of certainty and flexibility.

We are similarly not persuaded by the General Counsel's comment urging the Board to take a different approach to defining the reasonable period for bargaining. The General Counsel argues that the Board should fix the default reasonable period for bargaining at one year (with only limited grounds for extension beyond that). In her view, the proposed rule's minimum six-month period is inadequate to allow the new bargaining relationship to take root. Instead, according to the General Counsel, the reasonable period should mirror that of the statutory election bar, given that both voluntary recognition and elections are valid means of ascertaining employee free choice. She also argues that the multifactor test in the proposed rule could be confusing and difficult to administer.[236]

As explained, we believe that the approach adopted in the final rule is sound, both with respect to its use of the particular minimum and maximum periods and its use of a multifactor test to determine the length of the period between those two markers. We agree with the General Counsel that both voluntary recognition and Board elections are both valid means of establishing a union's right to represent employees. However, we do not believe that this fact dictates the appropriate length of the bar period. As explained, in a given case, the recognition-bar period may appropriately be fixed at one year (although not more). But, as suggested, circumstances will vary from case to case. Moreover, a bargaining relationship based on voluntary recognition is a consensual one, in contrast to a bargaining relationship based on an election. The latter relationship is effectively imposed by the Act, after the employer has *refused* to recognize the union, after what may have been a contentious election campaign, after the union has won the election, and perhaps after the employer's legal challenge to the union's certification has failed. It seems reasonable to believe, then, that bargaining which proceeds from voluntary recognition may be more productive, in a shorter time, than bargaining after an election. These circumstances are appropriately reflected in the bar period.

h. Comments Regarding Extending the Rule to the Unfair Labor Practice Context

In the NPRM, the Board ''invite[d] public comment on whether it should adopt as part of the Board's Rules and Regulations a parallel rule to apply in the unfair labor practice context, prohibiting an employer—which otherwise would be privileged to withdraw recognition based on the union's loss of majority support—from withdrawing recognition from a voluntarily recognized union, before a reasonable period for collective bargaining has elapsed.'' 87 FR 66909. No commenter supported the expansion of the proposed rule to unfair labor practice cases.

In response to the NPRM's invitation, some commenters weighed in on this issue. The General Counsel and NRTWLDF both oppose extending the scope of the rule to unfair labor practice cases, albeit for different reasons.[237] The General Counsel suggests that the Board, in the context of adjudication, should sharply limit the ability of employers to unilaterally withdraw recognition from unions in most circumstances, instead generally permitting withdrawal only based on the results of a Board election in which the incumbent union was defeated. This approach would largely obviate the need for a rule provision addressing unilateral withdrawals in the context of voluntary recognition.[238] Meanwhile, NRTWLDF opposes extending the rule to unfair labor practice cases because, in its view, such an extension would assertedly exacerbate the unequal treatment between employer's ability to voluntary recognize a union and an employer's ability to withdraw recognition. We have already addressed the premise of this point, with which we disagree.

As explained, we have decided not to expand the scope of the proposed rule. Thus, while the final rule rescinds current Section 103.21, it codifies the voluntary-recognition bar only as it applies in the representation-case context. The Board is free in a future unfair labor practice case to apply the voluntary-recognition bar as established through adjudication, consistent with the Board's traditional approach to the issue, or to modify the doctrine if and as appropriate for the unfair labor practice context. We express no view on the General Counsel's position that the Board should limit employers' ability to unilaterally withdraw recognition from incumbent unions in all circumstances, not simply in the voluntary-recognition context.

i. Comments Regarding the Smith's Food Rule (Rival Union's Right To File Petition Based on Showing of Interest Pre-Dating Voluntary Recognition)

Only the General Counsel weighed in on the question posed in the NPRM of whether the Board should retain or modify the rule set forth in *Smith's Food,* supra, 320 NLRB 844, which held that the voluntary-recognition bar did not foreclose a rival union's election petition where that union had a 30 percent or greater showing of interest pre-dating the voluntary recognition of another union. The *Smith's Food* approach ''ensure[s] that a union capable of filing a petition at the time of recognition is not denied the opportunity for an election because it underestimated a competing union's support, or it simply arrived at the Board's office a little too late. More importantly, [it] does not rigidly impose on employees the fortuitous consequences of the union's filing, a matter over which they have no control.'' *Smith's Food.*

The General Counsel urges that we codify the principle of *Smith's Food* in the final rule, but with modifications. Namely, she asks that the Board

[236] Comments of GC Abruzzo.

[237] Comments of GC Abruzzo; NRTWLDF.

[238] The General Counsel states that:

[T]he Board should decide this issue via adjudication and, in an appropriate case, hold that, absent an incumbent union's disclaimer of interest or an agreement between an incumbent union and an employer, an employer may lawfully withdraw recognition from its employees' Sec[.] 9(a) representative based only on the results of an RM or RD election. Indeed, the General Counsel's proposal achieves the same result as the Board's suggested rule because, upon restoration of the traditional voluntary recognition bar, an RM or RD election would not be permitted to proceed until after a reasonable period for bargaining has elapsed. Comments of GC Abruzzo.

increase the threshold for the rival union's showing of support to 50 percent and that the Board should only process the rival union's petition if it is filed within 14 days of the voluntary recognition.

Given the paucity of comments on this issue, however, the Board has decided to preserve the status quo with respect to *Smith's Food* and to leave the issue for future consideration. Thus, a new provision in the final rule provides that the issue will remain one for adjudication, leaving *Smith's Food* in place as precedent, but not codifying the holding in that case. In a future case, the Board would remain free either to reaffirm *Smith's Food* or to consider modifying the approach reflected in that precedent, whether as the General Counsel proposes or in some other manner, in a concrete context where the parties (and any amici) can fully argue their positions.

C. Rescission of Section 103.22 of the Board's Rules and Regulations

1. Explanation for Adoption of NPRM Proposal To Rescind § 103.22

The Board has decided to rescind in toto Section 103.22. Prior to the promulgation of Section 103.22, the Board had long held, through adjudication, that unions should not have less favored status with respect to construction employers than they possess with employers outside of the construction industry.[239] However, Section 103.22 imprudently established a hard and fast rule to treat unions representing construction employees differently. Although Section 8(f) provides an alternative mechanism for a construction employer to voluntarily recognize a union, there is no statutory basis to deprive unions representing construction employees from utilizing the same procedure under Section 9(a) to obtain voluntary recognition—and its attendant benefits—that is available to all other unions. Moreover, in contrast to bargaining relationships outside of the construction industry, Section 103.22 uniquely permits challenges to be raised at any time to a construction employer's voluntary recognition of a union under Section 9(a), unless the parties have retained and preserved contemporaneous evidence of the union's initial majority status that it can produce and have satisfactorily authenticated in a representation proceeding, potentially decades after the initial 9(a) recognition.

Furthermore, the Board recognizes the unique legal issues arising from the interplay between Section 8(f) and Section 9(a) and the particularly volatile nature of the construction industry. Accordingly, in rescinding Section 103.22 in toto, the Board has decided that it would not replace it with another rule but that it would resolve future issues that arise involving the proper standard for finding voluntary 9(a) recognition in the construction industry through adjudication. In *NLRB* v. *Bell Aerospace Co. Div. of Textron,* the Supreme Court recognized ''that the Board is not precluded from announcing new principles in an adjudicative proceeding and that the choice between rulemaking and adjudication lies in the first instance within the Board's discretion.'' [240] The Supreme Court continued that ''[i]t is true, of course, that rulemaking would provide the Board with a forum for soliciting the informed views of those affected in industry and labor before embarking on a new course. But surely the Board has discretion to decide that the adjudicative procedures in this case may also produce the relevant information necessary to mature and fair consideration of the issues.'' [241]

The Board recognizes that returning to adjudication to set forth the proper standard for assessing whether parties had formed a 9(a) bargaining relationship in the construction industry would restore, for the moment, the Board's prior decision in *Staunton Fuel* and *Casale Industries.* To the extent that these decisions are in tension with prior decisions of the D.C. Circuit, as asserted by certain commenters, the Board has attempted to address and accommodate those concerns through its adjudication in *Enright Seeding,* an unfair labor practice case, and will make further refinements to the appropriate standard, as necessary, in adjudicating future cases.[242]

2. Response to Comments

The Board received numerous comments on the proposal to rescind Section 103.22. In deciding that recission of Section 103.22 in toto is appropriate, we have carefully reviewed and considered these comments, as discussed below. We have also carefully considered the views of our dissenting colleague.

a. Comments Regarding Positive Evidence To Support 9(a) Status

In determining whether a union has rebutted the construction-industry presumption of an 8(f) bargaining relationship, commenters posited that a written memorialization of 9(a) recognition, as required under the Board's decision in *Staunton Fuel,* is precisely the type of positive evidence a union should be able to rely on to support its 9(a) status, in accordance with the common law of contracts and evidence.[243] These commenters argued that contract language serves an important role in distinguishing between the two types of legally distinct labor agreements in the construction industry and demonstrates the parties' intent to create a 9(a) relationship at the time of the contract's execution, should the union's 9(a) status ever be challenged years into the future. We agree that a written memorialization of the parties' agreement that a union has proffered the requisite showing to support 9(a) status is probative positive evidence and, importantly, distinguishes an 8(f) agreement from 9(a) recognition for all interested parties.

One commenter countered that contract language expressing the parties' intent to form a 9(a) relationship should not be dispositive in demonstrating a union's majority support.[244] Although we agree that intent itself is not dispositive of a union's 9(a) status, we recognize that the contract language is not only an expression of intent. It is a formal written acknowledgement that the conditions for forming the relationship have been satisfied, including that a union has proffered the requisite showing of majority support. As discussed further below, if the parties falsely made this assertion, an employer's grant of 9(a) recognition and a union's acceptance of that recognition are both unlawful. Additionally, the contract language is an agreement barring an employer from evading its bargaining obligations under the Act by falsely asserting that no 9(a) recognition had ever been granted.

b. Comments Regarding Contract Language Alone Creating 9(a) Status

Several commenters posited that Section 103.22 was promulgated based on a fundamental mischaracterization of

[239] *Casale Industries,* 311 NLRB at 953; *John Deklewa & Sons,* 282 NLRB at 1387 fn. 53.

[240] 416 U.S. 267, 294 (1974).

[241] Id. at 295.

[242] Our dissenting colleague questions why the Board did not adopt other suggested amendments to Sec. 103.22 in the final rule. Because we have decided to return to deciding issues related to Sec. 9(a) recognition in the construction industry through adjudication, we have no occasion in this rulemaking proceeding to entertain other proposals for replacing Sec. 103.22 with different regulatory text or otherwise modifying pre-Sec 103.22 precedent. Accordingly, we leave the further refinement of this area of Board law to case-by-case development.

[243] Comments of AFL–CIO/NABTU; UA.

[244] Comments of AGC.

the Board's decision in *Staunton Fuel*.[245] These commenters contended that, although it is true that *Staunton Fuel* allowed contract language to serve as probative positive evidence that voluntary recognition had been granted pursuant to Section 9(a), *Staunton Fuel* does not provide for contract language alone to create a 9(a) relationship or allow contract language to substitute for a union showing or offering to show evidence of its majority support. Indeed, according to these commenters, if other evidence casts doubt on the assertion that majority support existed at the time of the purported grant of 9(a) recognition, the contract language necessarily fails to establish 9(a) status and, within the 10(b) period, a party can challenge the basis for a union's 9(a) recognition under *Staunton Fuel.* On the other hand, multiple commenters, along with our dissenting colleague, argued that, under *Staunton Fuel,* contract language standing alone does establish the existence of a 9(a) relationship.[246] One commenter described *Staunton Fuel* as allowing fictional proof of majority status to substitute for reality.[247] Other commenters asserted that nothing in the statutory language or legislative history suggested that 9(a) representation could be granted by a mere statement in a collective-bargaining agreement, without proof of majority support.[248] The effect of rescission of Section 103.22, according to one commenter, would be to create a rebuttable presumption of a 9(a) relationship.[249]

As noted above, and as the Board stated in its recent decision in *Enright Seeding,* nothing in *Staunton Fuel* alters the basic premise that establishing a bargaining relationship under Section 9(a) requires a proffered showing of majority support for a union. 371 NLRB No. 127, slip op. at 3. The Board in *Enright Seeding* further recognized that ''contractual language may serve as evidence of a union's status as a Section 9(a) majority representative only if it is true. If other evidence casts doubt on the assertion that the union enjoyed majority support at the time the employer purportedly granted 9(a) recognition, then the contract language alone is insufficient to demonstrate the union's 9(a) status.'' Id. at 3–4.

We agree with those commenters that recognized that *Staunton Fuel* does not provide that contract language alone creates a 9(a) relationship. Contract language simply serves as a contemporaneous memorialization of 9(a) recognition that can be relied upon in the absence of contrary evidence. The commenters suggesting otherwise failed to appreciate the distinction between contract language supporting a union's assertion of 9(a) status in accordance with *Staunton Fuel* from the argument that is not part of *Staunton Fuel*—that contract language *itself* establishes a 9(a) relationship.[250]

c. Comments Regarding Labor Relations Stability and Employee Free Choice

As multiple commenters noted, Section 103.22 denies a construction employer, a voluntarily recognized union representing construction employees, and the construction employees themselves, from having certainty as to the stability of the collective-bargaining relationship and does so at the expense of construction employees' free choice as to their bargaining representative. One commenter posited that Section 103.22 was promulgated in response to unfounded fears that voluntary recognition in the construction industry is to the detriment of employee free choice, as Board case law prior to Section 103.22 already provided safeguards to protect employee free choice.[251] According to this commenter, while Section 103.22 does nothing to protect employee free choice, the ever-present threat it creates to a union's representative status denies these employees the benefit of knowing that there would be stability in their bargaining representative and their terms and conditions of employment. In the same vein, other commenters argued that Section 103.22 actually deprives employees of their free choice, because under 103.22 a union that had been properly designated as their 9(a) bargaining representative could be challenged as lacking majority support at any time.[252] We agree with these commenters that Section 103.22 detrimentally affects both labor relations stability and employee free choice.

At the same time, other commenters asserted that, prior to Section 103.22, the Board had placed too much emphasis on labor relations stability over employee free choice and, in doing so, unjustly deprived employees from being able to provide input into the selection of their bargaining representative.[253] One commenter argued that the Board had placed the interests of unions in the contract bar above those of employees who seek to rid themselves of a minority union that has never been subjected to a vote, particularly because of the potential difficulty in filing a decertification petition.[254] However, we believe that these comments not only minimize the Act's important policy goal of promoting labor relations stability but also needlessly dismiss the harm that Section 103.22 does to employee free choice. As discussed further below, the Board already had sufficient safeguards—independent of Section 103.22—to allow employees at the appropriate time to challenge a union's 9(a) status for lacking majority support, including by contacting a Board regional office and timely filing a decertification petition. Nonetheless, when a majority of construction employees in an appropriate unit have designated a union as their collective-bargaining representative, those employees should be able to enjoy the attendant benefits of 9(a) recognition, including stability as to their bargaining representative.

d. Comments Regarding Regional Directors' Assessment of 9(a) Status

Multiple commenters noted that, prior to Section 103.22, regional directors had been afforded discretion to evaluate the evidence in a specific case and assess whether a union had successfully rebutted the 8(f) presumption.[255] One commenter recognized that, even prior to Section 103.22, regional directors did not have to blindly accept the contract language but were permitted to assess evidence that calls into question whether a union had showed or offered to show its proof of majority support.[256]

We agree with these commenters that, prior to Section 103.22, regional directors were appropriately afforded discretion to determine whether the presumption of 8(f) recognition in the construction industry had been rebutted. Unlike the per se approach of Section 103.22, which outright prohibits the application of the voluntary

[245] Comments of LA Federation; AFL–CIO/NABTU; UA.

[246] Comments of AGC; ABC; Chamber; CDW.

[247] Comments of ABC.

[248] Comments of CDW; NRTWLDF.

[249] Comments of AGC.

[250] Our dissenting colleague states that ''[t]he issue is, and has always been, whether contractual language alone is sufficient to prove the existence of a 9(a) relationship.'' We agree that, first and foremost, the 9(a) relationship depends on and requires that the union enjoy majority support among the unit employees, not on the parties having drafted certain language into an agreement.

[251] Comments of LA Federation.

[252] Comments of AFL–CIO/NABTU; UA.

[253] Comments of AGC; Chamber. Our dissenting colleague similarly expresses concern that, by rescinding Sec. 103.22, the majority risks allowing construction industry employers and unions to enter into ''9(a) bargaining relationships without regard to the will of the majority of the employer's employees.''

[254] Comments of NRTWLDF.

[255] Comments of LA Federation; UA.

[256] Comments of UA.

recognition bar and contract bar rules in the construction industry in the absence of what could be very old authorization cards or other documents, we believe that the better approach is to afford regional directors the discretion to determine whether 9(a) recognition was properly granted. As discussed further below, if 9(a) recognition was granted despite the union not enjoying majority support, the Board already has an effective process to resolve such allegations even without Section 103.22.

e. Comments Regarding District of Columbia Circuit Precedent on the Use of Contract Language

Some commenters discussed whether Section 103.22 is required under District of Columbia Circuit precedent. One commenter pointed out that the District of Columbia Circuit has not directly ruled on whether contract language alone is sufficient to support a 9(a) relationship in the construction industry in the absence of contrary evidence that calls into question the veracity of the contract language.[257] According to this commenter, in both *Nova Plumbing* and *Colorado Fire Sprinkler,* the court found only that the contract language in the specific circumstances of those two cases was insufficient to show that the union enjoyed majority status at the time of recognition because in both cases other evidence existed that called into question the union's majority status. In fact, the District of Columbia Circuit suggested in *Allied Mechanical Services,* albeit in dicta, that contract language alone potentially could be sufficient to establish majority support for 9(a) recognition in the absence of contrary evidence. We therefore agree with this commenter.

As discussed above, the District of Columbia Circuit has recognized that contract language cannot support 9(a) recognition where it is shown not to be true, such as where the parties claim there was initial majority support even before a single employee had been hired. In *Nova Plumbing,* 330 F.3d at 537–538, the District of Columbia Circuit pointed to strong evidence in the record that contradicted the contractual language. Id. at 533. In particular, the record established that senior employees who had been longtime union members opposed the union representing them with this employer and also showed that a meeting between the senior employees and union representatives turned ''extremely hostile'' and the employer's field superintendents and other foremen ''encountered resistance'' as they informed other employees about having to join the union. Id. at 537. The court reasoned that language in the collective-bargaining agreement ''cannot be dispositive at least where, as here, the record contains strong indications that the parties had only a section 8(f) relationship.'' Id.

Subsequently, in *Allied Mechanical Services, Inc.* v. *NLRB,* the District of Columbia Circuit quoted the *Nova Plumbing* court but, in doing so, added emphasis to indicate that contract language cannot be dispositive of a union's 9(a) status where the record contains contrary evidence. 668 F.3d at 766 (''Standing alone . . . contract language and intent cannot be dispositive *at least where . . . the record contains strong indications that the parties had only a section 8(f) relationship.*'') (quoting *Nova Plumbing,* 330 F.3d at 537) (emphasis added in *Allied Mechanical Services*).

Similarly, the District of Columbia Circuit in *Colorado Fire Sprinkler* rejected the union's claim of 9(a) recognition where the union relied solely on demonstrably false contract language stating that the employer had ''confirmed that a clear majority'' of the employees had designated it as their bargaining representative, even though it was undisputed that not a single employee had been hired at the time the parties initially executed their agreement containing that language. 891 F.3d at 1036. In fact, as the court pointed out, ''at no point in the administrative record did the [u]nion even explain, let alone proffer, what evidence it claimed to have collected'' to support its assertion that a majority of employees had designated it as their bargaining representative. Id. at 1041. In the absence of such contrary evidence casting doubt on the union's initial majority support, however, the District of Columbia Circuit has not challenged the Board's reliance on contract language as a written memorialization of the parties' acknowledgment that the construction employer had granted a union 9(a) recognition.

On the other hand, some commenters have argued for a much broader reading of these District of Columbia Circuit decisions and claimed that the Board has ignored the position of the District of Columbia Circuit regarding the extent to which contract language can be considered in finding 9(a) status and made little discernible effort in resolving the conflicting views.[258] We think this argument is meritless. To the extent these commenters assert that the District of Columbia Circuit has required a union to show or offer to show evidence of majority support to find a 9(a) relationship in the construction industry, we do not take issue with that assessment. However, the contract language simply serves as contemporaneous evidence of the union's support from the time 9(a) recognition was initially granted. For that reason, the argument from one commenter that rescinding Section 103.22 could violate the Administrative Procedure Act because it would be contrary to District of Columbia Circuit decisions is not persuasive.[259] Moreover, in *Enright Seeding,* the Board clarified that ''[i]f other evidence casts doubt on the assertion that the union enjoyed majority support at the time the employer purportedly granted 9(a) recognition, then the contract language alone is insufficient to demonstrate the union's 9(a) status.'' [260] To the extent Board law is found to not align with court decisions applying *Staunton Fuel,* the Board is able to resolve such concerns through adjudication.

f. Comments Regarding Unlawful Employer-Union Collusion

Several commenters posited that Section 103.22 is unnecessary because, even before its promulgation, it was already unlawful for a construction employer to collude and falsely enter into an agreement with a union recognizing it as having majority support and, additionally, that an unfair labor practice proceeding is the proper forum for resolving whether 9(a) recognition had been improperly granted to a union as it contains the proper evidentiary and procedural safeguards to litigate the issue.[261] One commenter noted that, in representation proceedings, the Board does not allow extrinsic evidence challenging the propriety of a labor agreement or litigation of unfair labor practices, including whether a union lacked majority status at the time it was recognized as the 9(a) representative.[262]

On the other hand, some commenters claimed that rescission of Section 103.22 would give construction employers and unions a green light to collude and that there is a long history of backroom deals being made with favored unions in disregard of employee

[257] Comments of AFL–CIO/NABTU.

[258] Comments of ABC; Chamber; CDW. Our dissenting colleague adopts a similar reading of District of Columbia Circuit precedent.

[259] Reply comments of NRTWLDF.

[260] 371 NLRB No. 127, slip op. at 3–4.

[261] Comments of AFL–CIO/NABTU; LA Federation; UA.

[262] Comments of AFL–CIO/NABTU.

free choice.[263] Other commenters asserted that the possibility of an unfair labor practice proceeding is not a sufficient process for resolving an unlawful grant of 9(a) recognition because no unfair labor practice is committed by a construction employer merely granting 9(a) recognition if no attempt is made to improperly enforce an 8(f) agreement as a 9(a) agreement.[264] Another commenter suggested that restricting litigation of whether 9(a) recognition was improperly granted to unfair labor proceedings ignores reality and is written from a position of institutional privilege as employees do not have the knowledge, inside information, or institutional resources to file an unfair labor practice charge.[265]

Although we are very mindful of the importance of preventing unlawful collusion, and the deleterious effect that such collusion can have on employees' Section 7 rights, we disagree with our dissenting colleague and the commenters who claimed that Section 103.22 serves as a reasonable safeguard. Instead, we agree with the commenters that asserted that the most appropriate forum for challenging any claims of collusion is the same with or without Section 103.22—an unfair labor practice proceeding alleging violations of Sections 8(a)(2) and (1) and 8(b)(1)(A).[266]

Representation hearings, unlike those for unfair labor practices, are nonadversarial and do not offer the evidentiary and procedural safeguards, such as applying evidentiary rules or making credibility determinations, that should exist for reviewing the type of evidence necessary to challenge a construction employer's unlawful grant of 9(a) recognition to a union that lacked majority support. Contrary to the claim of one commenter,[267] regardless of whether an 8(f) agreement is enforced as a 9(a) agreement, an employer's grant of 9(a) recognition and a union's acceptance of it when it does not have majority support—across all industries, including construction—is an unfair labor practice by both the employer and the union. We also disagree with the unfounded claim of the commenter that employees are readily able to file representation petitions but do not have the expertise to file unfair labor practice charges.[268] The Board's regional offices are equipped to help employees with all their business before the Board, including the filing of unfair labor practice charges, which the regional office will then investigate and, if deemed meritorious, litigate on behalf of the charging party.

g. Comments Regarding Application of Section 10(b) 6-Month Limitations Period to Challenges to Construction-Industry Bargaining Relationships

Multiple commenters expressed concerns about Section 103.22's removal of a limitations period for challenging a voluntarily recognized bargaining relationship in the construction industry, which resulted from the Board's overruling of *Casale Industries* as part of the promulgation of Section 103.22.[269] These commenters referred to how construction employers and unions are now required to maintain evidence of the union's initial 9(a) recognition for years, even decades, even though recollections and documentary evidence would reasonably be expected to fade and dissipate over time or otherwise be incomplete.[270] As the General Counsel pointed out, the Board would be in the unenviable position of assessing the veracity of evidence long after card signers are likely no longer available or accessible.[271] One commenter noted that the removal of a limitations period is contrary to deeply held notions of equity in the United States, as reflected by statutes of limitations routinely being included in or imputed to laws to delineate the period of time within which a cause of action must be brought.[272]

According to one commenter, Section 103.22 did not need to remove the limitations period precisely because the 9(a) recognition must be unequivocally provided for in writing, thereby providing employees with prompt notice that their union has obtained 9(a) status and that the clock has started for pursuing a challenge to that recognition.[273] Another commenter argued that a construction employee would have no basis to assume that a labor agreement was entered into pursuant to Section 8(f), simply because of the legal presumption of 8(f) status, and that the employee should bear the risk of making such an errant assumption if it kept them from filing a representation petition within the 6-month limitations period.[274] That commenter further postulated that, if a construction employee is sophisticated enough to be aware of the presumption of 8(f) recognition in the construction industry, the same employee would reasonably understand the importance of filing an election petition within the limitations period.

Similarly, one commenter pointed out that, even if an employee fails to file a petition within the initial limitations period, the contract bar only lasts for up to 3 years, and the employee could always file a petition during the window period if it seeks to challenge the union's majority support.[275] Another commenter averred that, in the absence of the *Casale* limitations period, relationships that should be marked by stability are instead strained by uncertainty as to whether an employer, for reasons unrelated to employee free choice, will attempt to terminate or disrupt the relationship by filing an RM petition.[276] This commenter also noted that, paradoxically, the longer the relationship, the more difficult it will be to produce the requisite proof of initial majority support making that relationship least stable and most vulnerable to challenge, despite the Supreme Court's holding in *Bryan Manufacturing* recognizing the limited period during which challenges can be brought to a union's initial grant of 9(a) recognition.

On the other hand, both our dissenting colleague and some commenters asserted that the Board did not provide an explanation in the NPRM for why the recordkeeping requirement under Section 103.22 that required parties in the construction industry to retain indefinitely positive evidence of a union's initial 9(a) recognition is

[263] Comments of AGC; NRTWLDF. Our dissenting colleague raises similar concerns about the possibility of collusion, observing that rescinding Sec. 103.22 risks a scenario where parties ''will routinely be in violation of Sec. 8(a)(2) and 8(b)(1)(A)—and, if their contract includes union security, of Sec[.] 8(a)(3) and 8(b)(2) as well.''

[264] Comments of ABC.

[265] Reply comments of NRTWLDF.

[266] Although unfair labor practice proceedings are available for challenging any instances of collusion, whether in the construction industry or elsewhere, we do not agree with our dissenting colleague's speculation that rescinding Sec. 103.22 will increase the likelihood that such unfair labor practices will be committed. Our dissenting colleague also claims that Sec. 103.22 protects employees' right to petition for an election where no lawful Sec. 9(a) relationship has been formed. However, we see no reason to question the parties' written memorialization of the union's 9(a) recognition and majority support in the absence of contrary evidence. If such contrary evidence exists to show that the union lacked majority support, there is no question that the parties violated the Act. In those instances, even in the absence of Sec. 103.22, an employee and/or rival union will be free to file a timely petition and challenge the purported 9(a) recognition. See *Casale,* 311 NLRB at 953.

[267] Comments of NRTWLDF.

[268] Reply comments of NRTWLDF.

[269] Comments of AFL–CIO/NABTU; GC Abruzzo; LA Federation.

[270] Comments of AFL–CIO/NABTU; GC Abruzzo; UA.

[271] Comments of GC Abruzzo.

[272] Comments of UA.

[273] Comments of LA Federation.

[274] Comments of UA.

[275] Comments of AFL–CIO/NABTU.

[276] Id.

onerous or unreasonable.[277] A commenter and our dissenting colleague suggested that Section 103.22 does nothing to imperil unions that truly enjoy majority support and that a recordkeeping burden cannot trump employees' Section 7 rights.[278] Our dissenting colleague noted that Section 103.22 applied prospectively only. Another commenter noted that any recordkeeping burden imposed by Section 103.22 is only relevant if a construction employer or union want to be able to insulate a voluntary recognition from challenge under the Board's contract bar rules.[279] One commenter cited the Board's recordkeeping requirements in other contexts, such as with respect to dues deduction authorization cards or union membership forms.[280] Additionally, a commenter noted that no examples were given in the NPRM of where the loss of a collective-bargaining relationship had actually occurred since Section 103.22 was adopted.[281]

We agree with those commenters who expressed concerns about the impact on labor relations stability and employee free choice by not having a limitations period on challenges to a union's 9(a) status. It is crucial to collective bargaining that parties are guaranteed some stability as to their bargaining relationship and know that it cannot be challenged at any time. Employees who have designated a union as their bargaining representative deserve as much. Our dissenting colleague and those commenters who claim that it is not much of a burden for a construction employer and union to retain indefinitely positive evidence of a union's majority support fail to appreciate the likelihood that such evidence could go missing or disappear and that, even if retained, may only raise more questions than it answers. Although Section 103.22 applied prospectively only, it could still cause significant disruption to longstanding collective-bargaining relationships years or even decades into the future for collective-bargaining relationships first formed after April 2020. In addition, unlike dues deduction authorization and union membership forms, which are only relevant if the employee who signed the form is still working for the employer, the evidence of a union's initial 9(a) recognition required under Section 103.22 could be based on support from employees who have long since stopped working for the employer but would nonetheless create a rebuttable presumption of the union's continued majority support. It could be practically impossible years later to assess the authenticity of any such evidence.

We reject the claim of one commenter that the retention of the evidence of a union's initial 9(a) recognition must not be a burden because no examples were given in the NPRM of where the loss of a collective-bargaining relationship had occurred.[282] This commenter ignored how the most significant burden imposed by Section 103.22 is not in the present but years down the road. Over time, it is inevitable that memories will fade and witnesses will disappear. As the Supreme Court recognized in *Bryan Manufacturing,* the Section 10(b) limitations period is appropriately applied to voluntary recognitions—including those in the construction industry—to promote stability in bargaining relations and prevent the Board from being bogged down in evidentiary challenges that would ultimately prove impossible to resolve. Accordingly, in rescinding Section 103.22, we reinstate the Board's previous case law in *Casale* and its progeny.

h. Comments Regarding Uniqueness of the Construction Industry

Multiple commenters had varying perspectives on whether unions representing construction employees should be treated the same as other unions. Relying on the longstanding principle articulated in *Deklewa,* several commenters argued that unions should not be treated less favorably when representing construction employees as opposed to employees in other industries.[283] One commenter pointed to the lack of any evidence that Congress intended for unions representing construction employees to be uniquely burdened in gaining 9(a) status.[284] This commenter asserted that *Staunton Fuel* merely sought to put these unions on an equal footing as all other unions seeking voluntary recognition under Section 9. As another commenter put it, until the promulgation of Section 103.22, the Board had long recognized that Section 8(f) did not deprive employees in the construction industry from having the same opportunity to designate a union as their bargaining representative as those who work in other industries.[285] This commenter argued that, as in all other industries, employers in the construction industry must be allowed to develop long-lasting bargaining relationships with the unions representing their employees in order to provide a level of certainty and industrial stability. One other commenter asserted that, if the contract bar rules in effect prior to Section 103.22, which reflect decades of experience under the Act, adequately protect the free choice of employees working in nonconstruction industries, they also adequately protect the free choice of employees in the construction industry.[286]

On the other hand, some commenters stated that unions representing employees in the construction industry are unique, as evidenced by the very legality of 8(f) agreements.[287] One commenter noted the prevalence of multiemployer bargaining within the construction industry.[288] Another claimed that the realities of the construction industry dictated the automatic addition of *Staunton Fuel* language into contracts providing for 9(a) recognition even where the union had not obtained majority support.[289] Several commenters asserted that Congress adopted Section 8(f) because of the need for temporary, fluid, and short-term employment common in the construction industry where proving majority support would be difficult, instead of the permanent, stable, and long-term employment relationships that require proof of majority support under Section 9(a).[290] A commenter postulated that, if a construction workforce is not temporary, the employment relationship is more akin to those in nonconstruction industries and the union should have to prove its majority status through the standard 9(a) process.[291]

As we have explained above, we agree with the principle articulated in *Deklewa* that unions representing construction employees should not be treated less favorably with respect to the opportunity to obtain voluntary recognition than other unions. There is no indication in the statutory text of Section 8(f) or its legislative history to suggest that Congress, by granting construction employers and unions an alternative path to recognition through

[277] Comments of AGC.

[278] Comments of CDW; NRTWLDF.

[279] Comments of NRTWLDF.

[280] Id.

[281] Reply comments of NRTWLDF.

[282] Id.

[283] Comments of AFL–CIO/NABTU; LA Federation; UA.

[284] Comments of UA.

[285] Comments of LA Federation.

[286] Comments of AFL–CIO/NABTU.

[287] Comments of AGC; NRTWLDF.

[288] Comments of AGC.

[289] Comments of Chamber.

[290] Comments of ABC; CDW; Greszler; reply comments of NRWLDF.

[291] Reply comments of NRTWLDF.

8(f) agreements, simultaneously intended to deny them from utilizing a common method by which unions had obtained recognition—voluntary recognition by an employer. Furthermore, the prevalence of multiemployer bargaining in the construction industry does not alter the legitimate prerogative of a construction employer, even one participating in multiemployer bargaining, to voluntarily grant 9(a) recognition to a union with majority support.

On the same note, as discussed above, the mere adoption of contract language in an agreement does not confer 9(a) status. Both a construction employer and a union that insert language into an agreement asserting 9(a) status where a union does not enjoy majority support commit violations of the Act. We agree with those commenters that contend that the Board's proper response in those circumstances is for the violations to be litigated as unfair labor practices, not for the Board to destabilize collective-bargaining relationships and interfere with employee free choice for those parties that have properly abided by the law. To the extent that one commenter is correct that the construction industry has relied less on temporary, fluid, and short-term employment, there is even more reason for unions representing construction employees to enjoy the same rights as all other unions in obtaining 9(a) status. Permanent and long-term employment relationships benefit the most from the stability that comes with the Board's voluntary recognition bar and contract bar rules. Where a construction employer has voluntarily granted 9(a) recognition to a union or the parties have negotiated a new collective-bargaining agreement, it is vital that the parties' bargaining relationship cannot be challenged at a moment's notice.

i. Comments Regarding Other Federal Legislative Enactments

We reject one commenter's argument that we should be guided by how other federal legislative enactments might affect the proliferation of 8(f) agreements.[292] This commenter posited that the 2021 Infrastructure Investment and Jobs Act, Public Law 117–58, will require more 8(f) agreements to be executed so that contractors can partake in federally funded contracts. This commenter claimed that employees working under 8(f) agreements will be forced to have a significant portion of their wages sacrificed to insolvent construction-industry union pension plans because they will not be employed long enough to become vested to receive pension benefits and that employers may become subject to liability for underfunded multiemployer pension plans. This commenter also asserted that special financial assistance afforded to multiemployer pension plans and the Pension Benefit Guaranty Corporation will affect taxpayers and urged the Board to put this rulemaking on hold for an economic analysis of its impact.

Our principal concern is with promoting the policies of the Act, regardless of the extent to which other federal legislative enactments, including the 2021 Infrastructure Investment and Jobs Act, have affected or will affect the number of 8(f) agreements. Nonetheless, we have not been presented with any evidence that the number of 8(f) agreements have risen or that it has had an actual impact on the administration of multiemployer pension plans and, therefore, refrain from weighing in on the commenter's speculation. In addition, the claim that employees working under 8(f) agreements will have their wages deducted to make contributions to insolvent construction-industry union pension plans and that this will have to be paid for in the future by taxpayers is purely conjectural. Moreover, even if these assertions were true, they would be true even if Section 103.22 continued in effect because, as the commenter notes, these considerations are just as relevant if a union is recognized under Section 8(f) as under Section 9(a). To the extent the commenter disapproves of 8(f) agreements generally, that is an issue for Congress.

j. Comments Regarding the Board's Promulgation of Section 103.22

One commenter noted that the promulgation of Section 103.22 was flawed in its overruling of *Casale* because nowhere in the 2019 NPRM was that case cited or any question raised about the appropriateness of the then-existing limitations period, giving commenters no opportunity to present their views on this issue.[293] This commenter argued that the decision in the April 2020 rule to overturn *Casale* was not a logical outgrowth of the 2019 NPRM and that, accordingly, the April 2020 rule was promulgated in violation of the APA. The commenter also claimed that Section 103.22 was not supported by a reasoned analysis because no case was cited nor were any examples provided in which employee free choice was undermined by the Board applying its pre-Section 103.22 contract bar rules to an agreement entered into between a construction employer and a union recognized as the 9(a) representative.

We acknowledge that the overruling of *Casale* was done without providing any notice in the 2019 NPRM and that it was not a logical outgrowth of the proposed rule that was ultimately promulgated as Section 103.22. We agree with the commenter that interested parties had no reason to know to provide comments on the possibility of *Casale* being overruled. However, regardless of the propriety of the Board overruling *Casale* as part of the promulgation of Section 103.22 without having provided advance notice to the public, we base our decision to rescind Section 103.22, and restore *Casale,* on policy grounds—specifically, that unions representing construction employees should not be treated less favorably than other unions and should not be required to maintain indefinitely positive evidence to support the initial 9(a) recognition, outside of a written memorialization of a construction employer's 9(a) recognition of a union, in the absence of contrary evidence of the union's majority support.[294]

k. Comments Suggesting Modifications to the Proposed Rule

Multiple commenters proposed modifications to the proposed rule, instead of rescinding Section 103.22 in toto. One commenter recommended that the Board modify Section 103.22 instead of getting rid of it entirely.[295] This commenter argued that the Board should restore *Staunton Fuel* as applied to timely RM petitions, thereby barring a construction employer from challenging its own initial grant of 9(a)

[292] Comments of Greszler.

[293] Comments of AFL–CIO/NABTU.

[294] Accordingly, we are unpersuaded by our dissenting colleague's view that the 2019 NPRM implicitly raised the possibility of *Casale* being overruled on the grounds that the ''issue was squarely raised in public comments.'' Even though two commenters sua sponte raised *Casale* in their comments to the 2019 NPRM, other commenters with relevant insight into the application of *Casale* had no reason to provide comments about the effects of the Board overruling *Casale* because of the content of the 2019 NPRM. Nonetheless, we return to *Casale* for policy reasons.

[295] Comments of GC Abruzzo. As noted above, see supra fn. 243, we reject our dissenting colleague's suggestion that we did not sufficiently consider this alternative. To the contrary, we recognize the competing considerations raised by these commenters and that reevaluating the standard for voluntary 9(a) recognition in the construction industry may be prudent in the future. Precisely for that reason, we have determined that returning to deciding issues in this area of Board law through adjudication is the best course. If the Board is presented with a case where revising the current standard is found to best effectuate the policies of the Act, including both promoting labor relations stability and protecting employee free choice, the Board will be able to do so in that case.

recognition to a union, but not to timely RD and RC petitions filed by a bargaining-unit employee or rival union. The same commenter also urged the Board to restore the 6-month limitations period under *Casale* but clarify that it does not begin to run until at least one statutory employee is hired or otherwise has constructive notice that the employer granted 9(a) recognition to a union without majority support.[296]

Another commenter argued that resolving challenges to the initial grant of 9(a) recognition in a representation proceeding under *Casale* was unique to the construction industry and that the better rule would be to require claims that the union lacked majority status at the time it was first recognized to be litigated exclusively in unfair labor practice proceedings, as is the case with unions representing employees in all other industries.[297] One commenter suggested expanding Section 103.22 beyond representation cases to require a union representing construction employees to have to provide positive evidence of its initial grant of 9(a) recognition in unfair labor practice proceedings to justify its presumption of continued majority support, for instance in cases where a construction employer is alleged to have a duty to bargain with a union upon expiration of the parties' collective-bargaining agreement.[298]

As explained more fully above, in considering these suggested modifications to Section 103.22, we have decided to rescind Section 103.22 in toto and not to replace it with a new rule regarding the application of the voluntary-recognition and contract bars to the construction industry. We have concluded that a replacement rule is unwarranted. The same policies and practices governing the voluntary-recognition and contract bars outside of the construction industry should apply with equal force to unions representing or seeking to represent employees in the construction industry—except for where different processes are either required by Section 8(f) or specifically provided for in Board case law predating the adoption of Section 103.22. We continue to rely on the critical principle articulated by the Board in *Deklewa* that, with respect to voluntary recognition, ''nothing in this opinion is meant to suggest that unions have less favored status with respect to construction industry employers than they possess with respect to those outside the construction industry.'' 282 NLRB at 1387 fn. 53.

Rescission of Section 103.22 in toto without replacement also has other benefits. As noted above, we agree with the comments asserting that regional directors should again be afforded the discretion they had prior to Section 103.22 to evaluate whether to process a construction industry petition based on the evidence offered by the parties. The factual circumstances of a specific case are uniquely important to resolving construction industry cases because of the special considerations required under Section 8(f), including whether a union representing construction employees had successfully demonstrated its majority status to rebut the 8(f) presumption. Regional directors will return to having that discretion in the absence of a replacement rule. Rescission in toto without replacement will also allow the Board to use adjudication (rather than further rulemaking) in deciding whether to revisit, at some point in the future, the Board's pre-Section 103.22 construction industry case law, which we reinstate through this rulemaking.[299] Finally, the Board received no comments specifically urging the use of rulemaking instead of adjudication to set forth and develop its rules for processing construction industry petitions.

VI. Response to Dissent

Our dissenting colleague advances several reasons for declining to join the majority in rescinding the April 2020 rule and replacing its provisions addressing the blocking charge policy and voluntary-recognition bar doctrine. Our colleague primarily defends the April 2020 rule on policy grounds, arguing that it better promotes employee free choice than will the final rule. The majority of our colleague's arguments are specific to the individual subjects covered by the final rule, and we have already addressed and rebutted many of these arguments above. The balance of the dissent makes four broader arguments. As we explain below, we are unpersuaded that any of these arguments provides an adequate justification for retaining the April 2020 rule or for declining to adopt the final rule we issue now.

First, our dissenting colleague contends that the majority has failed to demonstrate the existence of changed circumstances justifying the rescission of the April 2020 rule and replacement of its provisions addressing the blocking charge policy and voluntary-recognition bar doctrine. Our colleague argues that the final rule is an example of ''needless policy oscillation that tends to upset the settled expectations of the Agency's stakeholders.'' In addition, he argues that the majority has failed to ''present any evidence that the 2020 Rule has infringed on employees' rights'' or that ''the 2020 Rule has failed to protect employees' rights as intended.''

As discussed more extensively above, we strongly disagree with our colleague's characterization of the final rule and its justification. As an initial matter, we are of the view that it was the April 2020 rule that initiated a sharp break with existing practice and ushered in a new era of instability in the area of representation-case law and procedure at issue in this rulemaking proceeding. By restoring the Board's historical blocking charge policy, pre-*Dana* voluntary-recognition bar doctrine, and firmly established recognition standards in the construction industry, the final rule will again bring the Board's representation-case procedures in alignment with what had been longstanding practices.

As for our colleague's contention that we are disturbing the settled expectations of Agency stakeholders, our review of the extensive public comments we received during this rulemaking proceeding suggests otherwise. Many commenters expressed significant frustrations with the 2020 rule and advanced persuasive policy and legal arguments for restoring prior Board law. For the reasons detailed above, we found merit in those commenters' views. While we also received numerous comments that expressed support for the 2020 rule, we are of the view that the final rule, which merely returns to the familiar standards that preceded the 2020 rule, will not prove unduly disruptive. In any case, as discussed above, we find any costs associated with changing course justified by the importance of returning to policies which better comport with the Board's statutory obligations. The Board must conduct elections under laboratory conditions and give effect to employees' free and fair designations of support for their chosen bargaining representatives.

Our dissenting colleague's argument that we present no evidence that the 2020 rule infringed on employees' rights or failed to operate as intended is incorrect. Although our justification for rescinding the 2020 rule is ultimately rooted in our judgment that it is inconsistent with the policies underlying the Act, we have also highlighted data and empirical evidence that support our decision. And despite our colleague's critique, both he and the 2020 Board principally defend the 2020

[296] Id.

[297] Comments of AFL–CIO/NABTU.

[298] Comments of AGC.

[299] *Bell Aerospace,* 416 U.S. at 294.

rule on policy grounds. In short, our colleague offers no evidence that persuades us that we must adhere to the 2020 rule or that we should reconsider our decision to adopt the final rule.

Next, our colleague criticizes the majority's policy justifications for the final rule. Our colleague argues that ''[t]he 2020 Rule put provisions in place to protect employees' choice of representative and their ability to 'voice' that choice through the established, preferred method of Board-conducted secret-ballot elections'' and that the ''removal of these protections today is directly at odds with the Board's mandate under the NLRA.'' For the reasons advanced above, we respectfully disagree with our colleague's suggestion that the April 2020 rule's provisions represented the best accommodation of the Board's statutory interests. Instead, we are of the view that the final rule does a better job balancing the Board's obligations to protect employee free choice, preserve laboratory conditions in Board-conducted elections, and resolve questions of representation fairly and expeditiously.

Relatedly, our colleague criticizes the title of the final rule on the basis that ''the 2024 Rule appears to value 'fair choice' . . . over the essential policy of employee free choice that the 2020 Rule was designed to protect.'' Our colleague's argument proves too much. We refer to both ''fair choice'' and ''free choice'' throughout the preamble to this rule. We use both phrases because we aim to capture the multiple, competing statutory interests that the Act requires the Board to consider and accommodate when developing its representation-case procedures. As we have argued, by maintaining such a narrow view as to what constitutes employee ''free choice,'' the 2020 rule gave short shrift to the Board's equally significant obligations to conduct fair elections and protect its election machinery, ensure that employees are shielded from coercion, and give effect to valid expressions of majority support for bargaining representatives. By focusing on ''fair choice'' and ''employee voice,'' we aim to place the emphasis where it belongs: on employees' fundamental Section 7 rights ''to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing'' and ''to refrain from'' any of these activities, 29 U.S.C. 157, and on the Board's obligation to determine whether a ''question of representation'' exists and, if so, to resolve the question by conducting ''an election by secret ballot,'' 29 U.S.C. 159(c).

Finally, our colleague observes that, following the Supreme Court's recent decision in *Loper Bright Enterprises* v. *Raimondo,*[300] ''it is an open question to what extent reviewing courts must afford deference to my colleagues' decision to repeal the 2020 Rule and promulgate a new rule in its place.'' We acknowledge our colleague's view that the effect of *Loper Bright* is an ''open question.'' *Loper Bright,* however, did not address or call into question longstanding Supreme Court precedent indicating that Congress intended to grant policymaking authority to the Board over the kinds of representation-case procedures at issue in this rulemaking proceeding.[301] Thus, for the reasons set forth in Section IV above, we believe the final rule is an appropriate exercise of the Board's delegated authority grounded in the Board's special competence when it comes to matters involving the mechanics of representation-case procedure.

VII. Dissenting View of Member Kaplan

Four years ago, the Board issued a final rule (''the 2020 Rule'') that made three well-advised changes to our rules and regulations.[302] As discussed in greater detail below, the amendments modified the Board's blocking-charge policy to eliminate the primary cause of delay in the conduct of representation elections; overruled *Lamons Gasket*[303] and reinstated the framework the Board adopted in *Dana Corp.*[304] to afford employees an opportunity to file a petition for a secret-ballot election[305] following their employer's voluntary recognition of a labor organization; and specified the proof of majority support necessary to demonstrate that a bargaining relationship in the construction industry, presumed to have been established under Section 8(f) of the Act, has instead been established through voluntary recognition under Section 9(a) of the Act.[306] The 2020 Rule, known as the ''Election Protection Rule,'' was designed to ''better protect employees' statutory right of free choice on questions concerning representation by removing unnecessary barriers to the fair and expeditious resolution of such questions through the preferred means of a Board-conducted secret-ballot election.'' 85 FR at 18366. In my considered judgment, the 2020 Rule has been a hard-won success, one which required the expenditure of considerable Agency resources to thoroughly consider, analyze, and respond to numerous public comments.

With their 2022 Notice of Proposed Rulemaking (''NPRM''),[307] the majority effectively announced their intention to reverse the outcome of the intensive rulemaking process that the Board had undertaken just two years earlier. And with their final rule (''the 2024 Rule''), my colleagues bring this unnecessary and counterproductive plan to fruition. In doing so, my colleagues point to no changed circumstances as justification for the reversal. To the contrary, the 2024 Rule is simply the product of a new Board majority's disagreement with the 2020 Rule, which they rescind not because they must, but because they can. One unfortunate consequence of this change is needless policy oscillation that tends to upset the settled expectations of the Agency's stakeholders.[308]

Worst of all, the rule my colleagues adopt is clearly inferior to the 2020 Rule. My colleagues have chosen to title this rulemaking ''Fair Choice Employee Voice.'' Consistent with its name, the 2024 Rule appears to value ''fair choice''—whatever that means—over the essential policy of employee free choice that the 2020 Rule was designed

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[300] 144 S. Ct. 2244 (2024).

[301] See *NLRB* v. *Waterman Steamship Corp.,* 309 U.S. 206, 226 (1940) (''The control of the election proceedings, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.''); see also *Linden Lumber Div., Summer & Co.* v. *NLRB,* 419 U.S. 301, 309–310 (1974) (''In light of the statutory scheme and the practical administrative procedural questions involved'' in determining the Board's representation-case procedures, the Court has deferred to the Board where its policy was not ''arbitrary and capricious or an abuse of discretion.''); *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 767 (1969) (''Congress granted the Board a wide discretion to ensure the fair and free choice of bargaining representatives.''); *NLRB* v. *A.J. Tower Co.,* 329 U.S. 324, 330 (1946) (observing the ''wide degree of discretion'' that Congress has bestowed the Board ''in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representative by employees'').

[302] *Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,* 85 FR 18366 (Apr. 1, 2020) (codified at 29 CFR 103.20 *et seq.*).

[303] 357 NLRB 934 (2011).

[304] 351 NLRB 434 (2007).

[305] In Board parlance, representation-election petitions filed by labor organizations are classified as RC petitions and those filed by employers are RM petitions; decertification petitions filed by an individual employee are called RD petitions.

[306] Sec. 8(f) of the Act refers to ''an employer engaged primarily in the building and construction industry.'' 29 U.S.C. 158(f). In the interest of simplicity, throughout this dissent I use the shorthand ''construction industry'' and ''construction employer.''

[307] See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships,* 87 FR 66890 (November 4, 2022).

[308] Several commenters agree. See, *e.g.,* Comments of Coalition for a Democratic Workplace and United States Chamber of Commerce.

to protect. The majority does not say who gets to decide what constitutes a ''fair choice''—my colleagues? labor unions?—or why it comes in order of priority before ''employee voice,'' a term that I am left to assume is intended as a synonym for employee free choice. Indeed, based on the final rule, it appears that the majority's concept of ''fair choice'' amounts to little more than coded language for prioritizing over employee free choice the actions of unions exercising their ''choice'' (1) to remain as exclusive representatives of bargaining units by delaying decertification elections indefinitely while they rebuild support; (2) to become exclusive bargaining representatives by accepting voluntary recognition without affording employees the opportunity to test those unions' support in a Board-conducted election; or (3) to upgrade their Section 8(f) status obtained in representing employees in the construction industry by becoming Section 9(a) exclusive representatives without ever having to reliably prove that a majority of unit employees have chosen them to be 9(a) rather than 8(f) representatives. In my judgment, the majority's apparent conception of ''fair choice'' is hardly fair at all.

Given that my colleagues pay mere lip service to employee free choice, it is hardly a surprise that they have decided to reverse all the protections to free choice embodied in the 2020 Rule. I cannot countenance the majority's unjustified policy reversals, and, therefore, I respectfully dissent. After supplying some general background on Board representation law, I will discuss and respond to each of my colleagues' proffered rationales justifying their abandonment of the 2020 Rule and promulgation of their final rule.

Finally, I note that, in the wake of the Supreme Court's decision in *Loper Bright Enterprises* v. *Raimondo,* 144 S.Ct. 2244 (2024), it is an open question to what extent reviewing courts must afford deference to my colleagues' decision to repeal the 2020 Rule and promulgate a new rule in its place.[309] I further note, however, that I do not agree with my colleagues that the Supreme Court precedent they cite establishes that ''Congress intended to grant policymaking authority to the Board'' over the issues involved in this rulemaking. None of the cases they cite suggest that the Court has afforded the Board ''wide discretion'' to enact rules that block employees' ability to exercise their fundamental statutory right to decide for themselves whether they wish to be represented by a union.[310]

General Background

Section 9(c) of the Act provides that the Board ''shall direct an election by secret ballot'' if the Board finds that a question of representation exists. The Supreme Court has repeatedly recognized that Congress granted the Board wide discretion under the Act to ensure that employees are able freely and fairly to choose whether to be represented by a labor organization and, if so, which one. E.g., *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 767 (1969). The Court has observed that ''[t]he control of the election proceedings, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.'' *NLRB* v. *Waterman S.S. Corp.,* 309 U.S. 206, 226 (1940). Importantly, in *NLRB* v. *A.J. Tower Co.,* the Court stated that ''the Board must act so as to give effect to the principle of majority rule set forth in [Section] 9(a), a rule that 'is sanctioned by our governmental practices, by business procedure, and by the whole philosophy of democratic institutions.' '' 329 U.S. 324, 331 (1946) (quoting S. Rep. No. 74–573, at 13). ''It is within this democratic framework,'' the Court continued, ''that the Board must adopt policies and promulgate rules and regulations in order that employees' votes may be recorded accurately, efficiently and speedily.'' Id.

Representation-case procedures are set forth in the Act and in the Board's regulations and caselaw. In addition, the Board's General Counsel maintains a non-binding Casehandling Manual describing representation-case procedures in detail.[311] The Act itself contains only one express limitation on the timing of otherwise valid election petitions. Section 9(c)(3) provides that ''[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.'' The Board instituted through adjudication a parallel limitation precluding, with limited exceptions, an electoral challenge to a union's representative status for one year from the date the union is certified following its selection by a majority of employees in an appropriate bargaining unit in a valid Board election. The Supreme Court approved this certification-year bar in *Brooks* v. *NLRB,* 348 U.S. 96 (1954). Through adjudication, the Board also created several additional discretionary bars to the timely processing of a properly supported election petition, including the ''blocking charges'' bar, the voluntary-recognition bar, and the contract bar. Concerned that these additional election bars were unreasonably interfering with employees' statutorily protected rights, the Board refined each one in the 2020 Rule. As further discussed below, the 2024 Rule imprudently reverses each of these refinements, at the expense of employee free choice.[312]

Discussion

I. The Blocking-Charge Policy

For decades, the Board's blocking-charge policy was exploited to frustrate the timely exercise by employees of their right to vote—most often, when they sought to vote whether to decertify their incumbent bargaining representative in a secret-ballot election. The policy enabled this by permitting unions to block the processing of a pending decertification petition by filing an unfair labor practice charge, regardless of whether the charge was meritorious. The 2020 Rule modified the blocking-charge policy to facilitate the timely exercise of employees' electoral rights, while at the same time ensuring that no election results can or

[309] In *Loper Bright,* the Court overruled *Chevron U.S.A.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), finding that ''[c]ourts must exercise their independent judgment'' in determining the scope of authority delegated by Congress and ''deciding whether an agency has acted within its statutory authority, as the APA requires.'' 144 S.Ct. at 2273. Although the D.C. Circuit recently found that the Board was entitled to substantial deference for adjudicative decisions, that Court had no need to reach the question of the degree of deference due when the Board engages in notice-and-comment rulemaking under the Administrative Procedure Act. See *Hospital de la Concepcion* v. *NLRB,* ____ F.4th ____, 2024 WL 3308431 *3 (D.C. Cir. July 5, 2024).

[310] See *Linden Lumber Div., Summer & Co.* v. *NLRB,* 419 U.S. 301, 309–310 (1974) (finding that the Board's decision finding that the respondent did not engage in bad faith bargaining by refusing to recognize the union based solely on authorization cards, and finding that the union should have instead petitioned for an election, was neither ''arbitrary and capricious'' nor an ''abuse of discretion''); *NLRB* v. *Wyman-Gordon Co.,* 394 U.S. 759, 767 (1969) (finding that respondent was required to comply with Board order to provide union with names and addresses of employees prior to election); *NLRB* v. *A.J. Tower Co.,* 329 U.S. 324, 330 (1946) (finding that the Board had the discretion to deny an employer's late challenge to a voter's ballot); *NLRB* v. *Waterman Steamship Corp.,* 309 U.S. 206, 226 (1940) (finding that the Board had the statutory authority to require that a respondent ensure that two competing unions had equal pre-election access to employees, where it afforded such access to one of the unions).

[311] NLRB Casehandling Manual (Part Two) Representation Proceedings.

[312] The 2020 Rule also revised the standard of proof required to establish a 9(a) bargaining relationship in the construction industry, again to protect employee free choice. As with the election bars, the 2024 Rule eliminates the 2020 Rule's protections.

will be certified where unfair labor practices have interfered with the free exercise of those rights. My colleagues undo these changes and resurrect the pre-2020 Rule blocking-charge policy. Although unions undoubtedly will be pleased, employees who have become dissatisfied with their incumbent representative predictably will not—and it is employees to whom the Act gives rights.

A. Background

The blocking-charge policy dates from shortly after the Act went into effect. See *United States Coal & Coke Co.,* 3 NLRB 398 (1937). A product of adjudication,[313] the policy permits a party—almost invariably a union and most often in response to an RD petition—to block an election indefinitely by filing unfair labor practice charges that allegedly create doubt as to the validity of the election petition or the ability of employees to make a free and fair choice concerning representation while the charges remain unresolved. Under this policy, upon request, petitioned-for elections are initially blocked at the time the relevant unfair labor practice charge is filed and may remain blocked for months, or years, if the requested election is ever held at all. See, *e.g., Cablevision Systems Corp.,* 367 NLRB No. 59 (2018) (blocking charge followed by regional director's misapplication of settlement-bar doctrine delayed processing until December 19, 2018, of valid RD petition filed on October 16, 2014; employee petitioner thereafter withdrew petition).

The adverse impact on employee RD (and employer RM) petitions resulting from the Board's blocking-charge policy, and the potential for abuse and manipulation of that policy by incumbent unions seeking to avoid a challenge to their representative status, have drawn criticism from numerous courts of appeals. See *NLRB* v. *Hart Beverage Co.,* 445 F.2d 415, 420 (8th Cir. 1971) (''[I]t appears clearly inferable to us that one of the purposes of the [u]nion in filing the unfair practices charge was to abort [r]espondent's petition for an election, if indeed, that was not its only purpose.''); *Templeton* v. *Dixie Color Printing Co.,* 444 F.2d 1064, 1069 (5th Cir. 1971) (''The short of the matter is that the Board has refused to take any notice of the petition filed by appellees and by interposing an arbitrary blocking[-]charge practice, applicable generally to employers, has held it in abeyance for over 3 years. As a consequence, the appellees have been deprived during all this time of their statutory right to a representative 'of their own choosing' to bargain collectively for them, 29 U.S.C. 157, despite the fact that the employees have not been charged with any wrongdoing. Such practice and result are intolerable under the Act and cannot be countenanced.''); *NLRB* v. *Midtown Service Co.,* 425 F.2d 665, 672 (2d Cir. 1970) (''If . . . the charges were filed by the union, adherence to the [blocking-charge] policy in the present case would permit the union, as the beneficiary of the [e]mployer's misconduct, merely by filing charges to achieve an indefinite stalemate designed to perpetuate the union in power. If, on the other hand, the charges were filed by others claiming improper conduct on the part of the [e]mployer, we believe that the risk of another election (which might be required if the union prevailed but the charges against the [e]mployer were later upheld) is preferable to a three-year delay.''); *NLRB* v. *Minute Maid Corp.,* 283 F.2d 705, 710 (5th Cir. 1960) (''Nor is the Board relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.''); *Pacemaker Corp* v. *NLRB,* 260 F.2d 880, 882 (7th Cir. 1958) (''The practice adopted by the Board is subject to abuse as is shown in the instant case. After due notice both parties proceeded with the representation hearing. Possibly for some reasons of strategy near the close of the hearing, the [u]nion asked for an adjournment. Thereafter it filed a second amended charge of unfair labor practice. By such strategy the [u]nion was able to and did stall and postpone indefinitely the representation hearing.'').

The potential for delay is the same when employees, instead of filing an RD petition, have expressed to their employer a desire to decertify an incumbent union representative. In that circumstance, the blocking-charge policy can prevent the employer from obtaining a timely Board-conducted election to resolve the question concerning representation raised by evidence that creates good-faith uncertainty as to the union's continuing majority support. Accordingly, the supposed ''safe harbor'' of filing an RM election petition that the Board majority referenced in *Levitz Furniture Co. of the Pacific,* 333 NLRB 717, 726 (2001), as an alternative to the option of withdrawing recognition (which the employer selects at its peril) is often illusory. As Judge Henderson stated in her concurring opinion in *Scomas of Sausalito, LLC* v. *NLRB,* it is no ''cure-all'' for an employer with a good-faith doubt about a union's majority status to simply seek an election because ''[a] union can and often does file a ULP charge—a 'blocking charge'—'to forestall or delay the election.' '' 849 F.3d 1147, 1159 (D.C. Cir. 2017) (quoting from Member Hurtgen's concurring opinion in *Levitz,* 333 NLRB at 732).

Additionally, concerns have been raised about the Board's regional directors applying the blocking-charge policy inconsistently, thereby creating uncertainty and confusion about when, if ever, parties can expect an election to occur. See Zev J. Eigen & Sandro Garofalo, *Less Is More: A Case for Structural Reform of the National Labor Relations Board,* 98 Minn. L. Rev. 1879, 1896–1897 (2014) (''Regional directors have wide discretion in allowing elections to be blocked, and this sometimes results in the delay of an election for months and in some cases for years—especially when the union resorts to the tactic of filing consecutive nonmeritorious charges over a long period of time. This is contrary to the central policy of the Act, which is to allow employees to freely choose their bargaining representative, or to choose not to be represented at all.'').

In 2014, the Board engaged in a broad notice-and-comment rulemaking review of the then-current rules governing the representation-election process. Many, if not most, of the changes that were proposed in the February 6, 2014, notice of proposed rulemaking[314] were focused on shortening the time between the filing of a union's RC election petition and the date of the election. The final Election Rule, which adopted 25 of the proposed changes, issued on December 15, 2014, and went into effect the following April. 79 FR 74308 (2014).

Of particular relevance here, the 2014 NPRM included a ''Request for Comment Regarding Blocking Charges.''

[313] Except for certain evidentiary requirements, discussed below, that are set forth in Sec. 103.20 of the Board's Rules and Regulations, the pre-2020 Rule blocking-charge policy was not codified. A detailed description of the prior version of the policy appears in the non-binding NLRB Casehandling Manual (Part Two) Representation, Sec. 11730–11734 (August 2007). In brief, the policy afforded regional directors discretion to hold election petitions in abeyance or to dismiss them based on the request of a charging party alleging either unfair labor practice conduct that ''interferes with employee free choice'' (a Type I charge) or conduct that ''not only interferes with employee free choice but also is inherently inconsistent with the petition itself'' (a Type II charge). Sec. 11730.1.

[314] Representation-Case Procedures, 79 FR 7318.

The Board did not propose changing the then-current blocking-charge policy, but it invited public comment on whether any of nine possible changes should be made, either as part of a final rule or through means other than amendment of the Board's rules.[315] Extensive commentary was received both in favor of retaining the existing policy and of revising or abandoning it. The final Election Rule, however, made only minimal revisions in this respect. The 2014 Board majority incorporated, in new Section 103.20 of the Board's Rules and Regulations, provisions requiring that a party requesting the blocking of an election based on an unfair labor practice charge make a simultaneous offer of proof, provide a witness list, and promptly make those witnesses available to the regional director. These revisions were viewed as facilitating the General Counsel's existing practice of conducting expedited investigations in blocking-charge cases. The 2014 majority declined to make any other changes in the existing policy, expressing the view that the policy was critical to protecting employees' exercise of free choice,[316] and asserting that ''[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference.'' [317] By contrast, dissenting Board Members Miscimarra and Johnson criticized the 2014 majority's failure to make more significant revisions to the blocking-charge policy, contrasting the majority's concern with the impact on employee free choice of election delays in initial-representation RC elections with a perceived willingness to accept prolonged delay in blocking-charge cases, which predominantly involve RD or RM petitions challenging an incumbent union's continuing representative status.

A 2015 review of the final Election Rule by Professor Jeffrey M. Hirsch excepted the majority's treatment of the blocking-charge policy from a generally favorable analysis of the rule revisions. Noting the persistent problems with delay and abuse, Professor Hirsch observed that ''[t]he Board's new rules indirectly affected the blocking charge policy by requiring parties to file an offer of proof to support a request for a stay, but that requirement is unlikely to change much, if anything. Instead, the Board should have explored new rules such as lowering the presumption that favors staying elections in most circumstances or setting a cap on the length of stays, either of which might have satisfied the blocking charge policy's main purpose while reducing abuse.'' [318]

B. The 2020 Rule's Modifications to the Blocking-Charge Policy

To address the concerns with the blocking-charge policy discussed above, and to safeguard employee free choice, the 2020 Rule provided that an unfair labor practice charge would no longer delay the conduct of an election, and it set forth the following rules.

Where an unfair labor practice charge, filed by the party that is requesting to block the election, alleges (1) violations of Section 8(a)(1) and 8(a)(2) or Section 8(b)(1)(A) of the Act that challenge the circumstances surrounding the petition or the showing of interest submitted in support of the petition, or (2) that an employer has dominated a union in violation of Section 8(a)(2) and seeks to disestablish a bargaining relationship, the election will be held and the ballots will be impounded for up to 60 days from the conclusion of the election. If a complaint issues with respect to the charge at any time prior to expiration of that 60-day period, the ballots will continue to be impounded until there is a final determination regarding the complaint allegation and its effect, if any, on the election petition. If the charge is withdrawn or dismissed at any time prior to expiration of that 60-day period, or if the 60-day period ends without a complaint issuing, the ballots will be promptly opened and counted. The 2020 Rule further provides that the 60-day period will not be extended, even if more than one unfair labor practice charge is filed serially.

For all other types of unfair labor practice charges, the 2020 Rule provided that the ballots will be promptly opened and counted at the conclusion of the election, rather than temporarily impounded. Finally, for all types of charges upon which a blocking-charge request is based, the 2020 Rule clarified that the certification of results (including, where appropriate, a certification of representative) will not issue until there is a final disposition of the charge and a determination of its effect, if any, on the election petition.[319] 85 FR at 18369–18370, 18399.

C. Critique of the Majority's Readoption of the Pre–2020 Rule Blocking-Charge Policy

Demonstrating little concern for the previous abuse of the Board's blocking-charge policy and the inadequacy of the offer-of-proof requirements imposed by the 2014 final Election Rule, my colleagues would simply reverse all that was accomplished in the 2020 Rule and return the Board to what they refer to as the ''historical'' blocking-charge policy as modified by the Election Rule. My colleagues ostensibly regard the blocking-charge policy's decades-long endurance as a sufficient justification to resurrect the policy without modification irrespective of its glaring deficiencies. But in stressing the ''historical'' nature of the blocking-charge policy, the majority largely dismisses the similarly historical abuse of that policy, which also goes back decades. That the ''historical'' blocking-charge policy persisted for decades hardly signifies that it was wise or just. Board policy and precedent, however historical, need not bind us forever when wrong. As the late Supreme Court Justice Oliver Wendell Holmes, Jr. said: ''If truth were not often suggested by error, if old implements could not be adjusted to new uses, human progress would be slow. But scrutiny and revision are justified.'' [320] Regarding the blocking-charge policy, scrutiny and revision were clearly justified.

However well intentioned, the historical blocking-charge policy stifled the exercise by employees of their fundamental right, guaranteed by the Act, to choose whether to be represented by a labor organization and, if so, which one. As the 2020 Rule appropriately concluded, the blocking-charge policy ''encourage[d] . . . gamesmanship, allowing unions to dictate the timing of an election for maximum advantage in all elections presenting a test of representative

[315] 79 FR 7334–7335.

[316] 79 FR at 74418–74420, 74428–74429.

[317] 79 FR 74429.

[318] Jeffrey M. Hirsch, *NLRB Elections: Ambush or Anticlimax?,* 64 Emory L.J. 1647, 1664 (2015).

[319] Nothing in the 2020 Rule altered the existing requirements that only a party to the representation proceeding may file the request to block the election process; only unfair labor practice charges filed by that party may be the subject of a request to block; that party must file a written offer of proof as well as the names of witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony; and that party must promptly make available to the regional director the witnesses identified in the offer of proof.

Citing *Rieth-Riley Construction Co., Inc.,* 371 NLRB No. 109 (2022), the majority observes that the 2020 Rule ''did not disturb the authority of regional directors to dismiss a representation petition, subject to reinstatement, under the Board's long-standing practice of 'merit-determination dismissals.' '' Although I stated my agreement there that regional directors retain this authority ''at least where . . . the regional director has found merit to unfair labor practice charges and issued a complaint before the petition was filed,'' I dissented in that decision because, inter alia, my colleagues erroneously affirmed merit dismissals in the face of extraordinary delay and a failure to hold a ''causal nexus'' hearing. See *Rieth-Riley,* supra, slip op. at 8–13 (Members Kaplan and Ring, dissenting).

[320] Oliver Wendell Holmes, Jr., The Common Law 37 (1881).

status,'' regardless of the type of petition (RD, RC, or RM) filed.[321] 85 FR at 18376 & fn. 81. Moreover, the 2020 Rule appropriately concluded that the blocking-charge policy ''denie[d] employees supporting a petition the right to have a timely election based on charges the merits of which remain to be seen, and many of which will turn out to have been meritless.'' Id. at 18377. In the meantime, during the extended delay caused by a blocking charge, any momentum in support of a valid petition may be lost, and the employee complement may substantially turn over.[322] Id. at 18367, 18374. Thus, in a very practical sense, ''employees who support [RD or RM] petitions are just as adversely affected by delay as employees who support a union's initial petition to become an exclusive bargaining representative.'' [323] 84 FR 39930, 39937 (2019).

Contrary to the majority, there is nothing improper in recognizing the drawbacks of the blocking-charge policy and making changes to eliminate them. The Board in the 2020 Rule did precisely that. The 2024 rule undoes this necessary progress, elevating history over substance. Illustrative of this point is my colleagues' heavy reliance on the Fifth Circuit's positive perceptions of the historical policy fifty years ago.[324] However, other circuit-court cases from that time and much earlier recognized the problems addressed in the 2020 Rule. Indeed, the 2020 Rule observed that ''courts of appeals have criticized the blocking charge policy's adverse impacts on employee RD petitions, as well as the potential for abuse and manipulation of that policy by incumbent unions seeking to avoid a challenge to their representative status.'' 85 FR at 18367 (citing *NLRB* v. *Hart Beverage Co.,* 445 F.2d at 420; *Templeton* v. *Dixie Color Printing Co.,* 444 F.2d at 1069; *NLRB* v. *Midtown Serv. Co.,* 425 F.2d at 672; *NLRB* v. *Minute Maid Corp.,* 283 F.2d at 710; *Pacemaker Corp.* v. *NLRB,* 260 F.2d at 882).[325]

In returning to the ''historical'' blocking-charge policy, the majority contends that this policy is necessary to ''provide laboratory conditions for ascertaining employee choice during Board-conducted elections'' and to ''protect the Sec[tion] 7 rights of employees to freely choose whether to be represented [by a union] for purposes of collective bargaining . . . by shielding employees from having to vote, and the Board from having to conduct elections, under coercive circumstances.'' In other words, my colleagues view the mere act of *conducting* an election—in the face of unlitigated and unproven accusations [326]—as injurious to

[321] The Board has long been aware of this gamesmanship. Section 11730 of the Board's August 2007 Casehandling Manual for representation proceedings states that ''it should be recognized that the policy is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition.'' Further, the 2014 final Election Rule stated that the Board was ''sensitive to the allegation that at times, incumbent unions may abuse the policy by filing meritless charges in order to delay decertification elections,'' and it sought to address that issue by adding the offer-of-proof evidentiary requirements in Sec. 103.20 (currently Sec. 103.20(a)) of the Board's Rules and Regulations. However, Sec. 103.20(a), standing alone, was not adequate to the task of ending gamesmanship through blocking charges. I agree with Professor Hirsch's observation that the mere offer-of-proof requirement—which the 2020 Rule left undisturbed and which the majority apparently believes is, standing alone, sufficient to address the threats to employee free choice posed by abuse and manipulation—would be ''unlikely to change much, if anything.'' See 64 Emory L.J. at 1664. The majority's reliance on *Associated Builders and Contractors of Texas, Inc.* v. *NLRB,* 826 F.3d 215, 228 (5th Cir. 2016), as supporting the original Sec. 103.20 is misplaced. There, the court did not substantively endorse the 2014 Election Rule's decidedly modest changes to the blocking-charge policy. It merely rejected a facial challenge to the Election Rule based on the plaintiffs' failure to carry their ''high burden'' of demonstrating either that the Board lacked authority to promulgate the rule or that the rule was arbitrary and capricious under the Administrative Procedure Act. Id. at 229.

Significantly, the majority largely downplays and dismisses the gamesmanship problem, claiming that ''there has been no factual demonstration that it was the norm for unions to file nonmeritorious blocking charges—let alone to file frivolous charges—in order to delay elections in RD or RM cases when the historical blocking charge policy was in effect.'' But the majority's claim begs the question of exactly how much union abuse of the blocking-charge policy they would find sufficient to justify taking action to prevent it. Indeed, the majority cites data purporting to show that ''[a]pproximately 66% (86 out of 131) of the decertification petitions that were blocked in FY 2016 and FY 2017 were blocked by meritorious charges.'' But if more than one third of decertification petitions during that timeframe were blocked by nonmeritorious charges, it is difficult to conclude that the ''historical'' blocking-charge policy properly protects employees' statutory right to decide whether to become represented by, or to continue existing representation of, a union. Furthermore, my colleagues' data suggests that the percentage of petitions blocked by ''meritorious'' charges is overstated. My colleagues define ''meritorious'' charges as charges that led the General Counsel to file a complaint. However, that definition is misleading because there is no assurance those ''meritorious'' actually had merit. Just because a regional director issues a complaint does not mean that an employer violated the Act; if it did, neither agency administrative law judges nor the Board would have much to do. In addition, my colleagues' data assume that all settlement agreements, even those with non-admission clauses, render the underlying charges ''meritorious.'' See 85 FR at 18377 (observing that ''a charge is not meritorious unless admitted or so found in litigation''). For obvious reasons, including litigation costs, employers might decide to settle unfair labor practice charges for reasons unrelated to their merit. For these reasons, my colleagues' suggestion that there is insufficient evidence that nonmeritorious or frivolous blocking charges are ''the norm'' would seem to presage the majority's tolerance of a very substantial burden on employee free choice before even acknowledging, let alone redressing, this harm.

[322] The majority contends that ''the momentum that the [2020 Rule] seeks to preserve may be entirely illegitimate, as in cases where the employer unlawfully initiates the decertification petition, or the momentum may be infected by unlawful conduct.'' But if the momentum truly is ''illegitimate'' under the hypothetical circumstances the majority describes, then the Board will not certify the election results. If, however, the momentum is in fact legitimate, the 2020 Rule appropriately protects it.

Further, the majority rejects the momentum concerns occasioned by application of the pre-2020 blocking charge policy ''where blocking charges are filed by a petitioning union in the initial organizing context'' because under that policy a union has the discretion to control the timing of the election by determining whether to request a block of its election petition. This observation proves too much. Indeed, my colleagues effectively highlight the historical power imbalance between union election petitioners and individual decertification petitioners pertaining to the use of blocking charges. Thus, a union can decide whether it prefers to delay an upcoming election or to hold the election, a decision that the union will almost certainly make based on its polling of bargaining unit employees' union sentiments. Decertification petitioners, in contrast, have no such power. In any event, blocking charges are overwhelmingly filed to block RD (and RM) elections in the decertification context, not RC elections petitioned for in the initial organizing context.

[323] As the 2020 Rule recognized, the potential for the blocking-charge policy to delay elections also exists ''when employees, instead of filing an RD petition, have otherwise expressed to their employer a desire to decertify an incumbent union representative'' and the employer files an RM petition seeking a timely election. Id. at 18367. Consequently, the purported ''safe harbor'' afforded employers uncertain of a union's ongoing majority support—filing an RM petition rather than withdrawing recognition (a perilous option)—is often illusory. See *Levitz Furniture Co. of the Pacific,* supra; see also *Scomas of Sausalito, LLC* v. *NLRB,* 849 F.3d at 1159 (Henderson, J., concurring) (observing that ''an employer with a good-faith doubt about a union's majority status can call for an election, . . . but it is no cure-all [given that a] union can and often does file a ULP charge—a blocking charge—to forestall or delay the election'') (internal citations and quotation marks omitted). By reinstating the pre-2020 blocking charge policy, my colleagues create an incentive for employers to withdraw recognition rather than file a RM petition vulnerable to a block, contrary to the Board's avowed preference for RM elections and its creation, in *Levitz,* of rules to incentivize employers to file RM petitions. See *Levitz,* supra.

[324] See generally *Bishop* v. *NLRB,* 502 F.2d 1024 (5th Cir. 1974).

[325] The majority's dismissal of these cases as ''decades old'' not only discounts the cases' precedential value, but also underlines the folly of the Board's decades-old insistence on maintaining the blocking charge policy without necessary reforms. The circuit courts' criticisms are just as valid now as when first articulated. Incidentally, my colleagues' heavy reliance on *Bishop,* supra, decided in 1974, would itself appear to be a ''decades-old'' case. The majority somehow finds this observation ''puzzling,'' so let me be more direct: they cannot reasonably dismiss the relevance of cases based on age when they principally rely on a case of similar vintage (*Bishop*).

[326] The majority faults the 2020 Rule for its purported ''skepticism toward regional director administrative determinations in this context,''

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which they claim is ''in considerable tension with Congress' decision to authorize regional directors to administratively decide when elections should be conducted in the first place and when the results of elections should be certified in Section 3(b) of the Act.'' My colleagues miss the point. Initially, it warrants mention that Section 3(b) authorizes *the Board* to delegate this authority to regional directors, subject to Board review. The Board has done so, and I have no quarrel with that delegation.

At issue here is whether the Board should block employees from voting in a Board-supervised election based on an initial administrative determination that is itself premised on nothing more than an offer of proof. That initial determination, as the 2020 Rule recognized, generally reflects no investigatory finding of merit to the unfair labor practice charge, let alone a full adjudication of the charge's merits. See 85 FR at 18377 (''A regional director typically acts on a blocking-charge request soon after the request is made, if not on the same day, and a charge that appears facially sufficient based on an offer of proof may yet be dismissed as meritless after full investigation or may ultimately be withdrawn. Meanwhile, under the [pre-2020 blocking charge] policy, an election is delayed until that happens.''). Indeed, the majority acknowledges as much in ''declin[ing a commenter's] . . . suggestion that [the Board] should deprive regional directors of the authority to delay elections based on unfair labor practice charges supported by adequate offers of proof unless the regional director has made a formal merit determination.'' The majority misfires in asserting that my concerns with certain initial administrative determinations are ''internally inconsistent'' with the continuing availability of administrative merit-determination dismissals of pertinent unfair labor practice charges after the 2020 Rule. See *Rieth-Riley,* supra, slip op. at 8, 10–11 (Members Kaplan and Ring, dissenting) (agreeing with the majority that merit-determination dismissals continue to be available after the 2020 Rule ''at least where . . . the regional director has found merit to unfair labor practice charges and issued a complaint before the petition was filed,'' and a ''valid causal nexus'' has been found between the alleged unfair labor practices and employee disaffection in a hearing, as required by *Saint Gobain Abrasives, Inc.,* 342 NLRB 434 (2004)). In context, the 2020 Rule expressed concern with the occurrence of ''indefinite delay because of a *discretionary* administrative determination regarding the *potential* impact of the *alleged* misconduct on employees' ability to cast a free and uncoerced vote on the question of representation.'' 85 FR at 18367 (emphasis added). The problem is that the pre-2020 blocking charge policy stymies employee free choice by permitting an election block based on the ''discretionary'' evaluation of a charging party's offer of proof regarding the ''potential impact'' of misconduct that has been ''alleged'' but not found through either an investigation or an adjudication. An administrative determination of merit after an investigation carries more weight that an initial administrative evaluation of an offer of proof, albeit still less weight than a final Board determination on the merits. And, as discussed, the reliance on offers of proof and witness availability requirements alone are insufficient to curb known union abuse of blocking charges. Meanwhile, the majority falsely quotes my position as purportedly being skeptical of a regional director's ''mere administrative determination,'' as neither the 2020 Rule nor the dissent from the 2022 NPRM uses that phrase. It is easy for my colleagues to find an ''inconsistency'' when they selectively quote and outright misquote the 2020 Rule without regard for context.

In a similar vein, my colleagues strain to compare an administrative determination to issue a complaint in an unfair labor practice case with ''Board law permitting an employer to withdraw recognition from an incumbent union that had won employee free choice. This supposed imperative of ''shielding employees'' from voting *at all* under what the majority deems ''coercive circumstances''—even though the 2020 Rule guarantees that any coerced electoral result will not be given legal effect—runs like a leitmotif through the majority's justification for the final rule. I disagree that the mere possibility that a choice may be compromised justifies blocking employees from exercising their right to make that choice altogether.

I fully recognize, as has the Supreme Court, that it is the ''duty of the Board . . . to establish the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees.'' *NLRB* v. *Savair Mfg. Co.,* 414 U.S. 270, 276 (1973) (internal quotation marks omitted). In this connection, the Board has long held that ''[a]n election can serve its true purpose only if the surrounding conditions enable employees to register a free and untrammeled choice for or against a bargaining representative.'' *General Shoe Corp.,* 77 NLRB 124, 126 (1948). To that end, ''[i]n election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.'' Id. at 127. It does not follow, however, that where it has merely been *alleged*—not found—that an employer has engaged in conduct that might affect the freedom of an electoral choice, the answer is to prevent employees from making any choice at all. To begin with, the Board in *General Shoe* emphasized that it had ''sparingly'' exercised its power to ''set an election aside and direct[ ] a new one,'' saving that remedy for election misconduct ''so glaring that it is almost certain to have impaired employees' freedom of choice.'' Id. at 126 (emphasis added). Board law is therefore clear that employees are to be afforded the opportunity in an election to make a ''free and untrammeled *choice*'' of bargaining representative, with ''choice'' being the operative word.

Collectively choosing to select or reject a bargaining representative through the Board's electoral processes necessarily entails voting in an election that is eventually certified and given legal effect. Under the *General Shoe* standard, the Board will set aside an election—*i.e.,* deny it legal effect—where employees were denied the opportunity to make a free and uncoerced choice. See id. Without an uncoerced and therefore legally valid vote, there can be no effective choice of bargaining representative. In such circumstances, the question of representation raised by the election petition is preliminarily answered but not resolved.[327] Assuming unfair labor

a Board-conducted election based merely on the General Counsel's administrative determination that a majority of the unit no longer desire union representation.'' The majority compares incommensurables. These two types of administrative determinations are not remotely the same, as determining whether there is sufficient evidence that an unfair labor practice was committed entails a level of complexity and an exercise of judgment—as is evident from my colleagues' own description of a regional investigation—simply not present in a tally of union supporters within a bargaining unit.

Ultimately, in my considered view, employee free choice is best served by the 2020 Rule's procedures permitting employees to vote, and then relying on the relevant administrative determinations to decide whether and when ballots should be impounded (in certain types of cases) or certifications issued. Additionally, promptly holding elections helps prevent employees from mistakenly inferring that unproven unfair labor practice allegations necessarily have merit.

[327] My colleagues fault the 2020 Rule for requiring the conduct of certain ''elections that will not resolve the question of representation'' because they were ''conducted under coercive conditions that interfere with employee free choice,'' which, they say, ''imposes unnecessary costs on the parties and the Board.'' Consistent with the express language of the 2020 Rule, I consider ''any consequential costs [to be] worth the benefits secured'' of safeguarding employee free choice by conducting petitioned-for elections. 85 FR at 18378. Indeed, ''one of the principal duties of the Board is to resolve questions of representation by holding elections, and that duty is not discharged where the Board does not process a representation petition, especially where there is no legitimate basis for delaying an election.'' Id. In any event, ''it is clearly not the case that unfair labor practices alleged in a charge, even if meritorious, will invariably result in a vote against union representation. If the union prevails despite those unfair labor practices, there will be no second election.'' Id. Meanwhile, it warrants consideration that just last year, my colleagues essentially reinstated the 2014 Election Rule (79 FR 74308), which implemented a variety of amendments to the Board's representation procedures designed to speed up elections in the initial organizing context. *Representation-Case Procedures,* 88 FR 58076 (2023). Under the reinstated rules, the filing of a request for review of a decision and direction of election is routinely postponed until after the election has been held. If, for example, a request for review asserts that an election had been directed in an inappropriate unit, and the Board agrees, the election would have to be run again (unless the union disclaims interest), thereby ''impos[ing] unnecessary costs.''

The majority baselessly asserts that the 2020 Rule ''*appeared to suggest* that the pre-April 2020 blocking charge policy impeded settlement and that the policy should therefore be eliminated to promote settlement of blocking charges.'' (emphasis added). In fact, the 2020 Rule merely summarized a single comment as follows: ''[A]s one commenter notes, impoundment of ballots does not fully ameliorate the problems with the current blocking-charge policy because impoundment fails to decrease a union's incentive to delay its decertification by filing meritless blocking charges; *makes it more difficult for parties to settle blocking charges, as they would not know the results of the election during their settlement discussions;* and

practice charges filed during the pendency of an election petition are subsequently determined to be meritorious, if the election result is not given legal effect—and the 2020 Rule ensures it will not be—then employees' right to make a free and uncoerced choice *has not been abridged.* In contrast to the 2020 Rule, the pre-2020 blocking charge policy being reinstated will indefinitely block employees from registering any choice at all based on charges that have not been (and may never be) found meritorious and that may even have been filed merely to delay an election in hopes of preserving the union's representative status.

The majority's claim that the potential for employees to vote in a ''coercive atmosphere'' necessarily inhibits employee free choice overlooks the fact that under their approach, employees may be deprived of the opportunity to register any choice at all. The majority ''recognize[s] that the pre-April 2020 blocking charge policy can delay elections,'' including when nonmeritorious charges are filed with a request to block, but nevertheless asserts that ''the benefits of permitting regional directors to block elections . . . outweigh any such delay.'' In other words, the majority believes that because some unfair labor practice charges prove meritorious and that where this is the case, an election, if allowed to proceed, would be conducted under ''coercive conditions,'' *every* election should be blocked whenever a properly supported blocking charge is filed, even though this means that elections will be blocked by nonmeritorious charges as well. This is rather like saying that all baseball games should be delayed indefinitely because some games, if played, would be called on account of rain. I believe the game should proceed and would therefore adhere to the 2020 Rule, permitting elections to proceed and intervening to set aside the results if and when an unfair labor practice charge proves meritorious. The majority further asserts that the pre-2020 blocking charge policy ''preserv[es] employee free choice'' by eventually permitting employees to vote inasmuch as ''the regional director [is] to resume processing the representation petition to an election if the blocking charge [is] found to lack merit.'' But this is no answer to the very real problem of unions taking unfair advantage of the blocking charge policy to file successive charges, thereby creating successive blocks that continue to delay employees' ability to exercise their Section 7 rights. Without ascribing motives to my colleagues, I cannot avoid observing that the pre-2020 blocking charge policy to which they return does make it easier for incumbent unions bent on self-preservation to frustrate the will of the majority. Safeguarding employees' access to the ballot box remains a compelling reason why the amendments to the blocking-charge policy made in the 2020 Rule were (and still are) necessary.

Moreover, as the 2020 Rule appropriately recognized, ''the concerns raised about the harm that employees would suffer by voting in an election that is later set aside are overstated and can be addressed by the prophylactic post-election procedures of certification stays and, in some cases, impounding ballots, set forth in the [2020 Rule].'' 85 FR at 18378. The effectiveness of these procedures cannot be attacked without calling into question decades of Board decisions. Yet my colleagues do exactly that.[328] For nearly the entirety of the Act's existence, the Board has set aside elections based on meritorious objections and has ordered second elections. See, *e.g., Paragon Rubber Co.,* 7 NLRB 965, 966 (1938). In many of those cases, the objectionable conduct was an unfair labor practice. Based on the Board's extensive experience in handling election objections, it defies reason to suggest that employee free choice in a second election will invariably be affected by a union's prior election loss set aside based on unfair labor practices.[329] That has not been the case in many rerun elections where employees have voted for union representation in a second or even third election.[330] 85 FR at 18378. I therefore

further frustrates and confuses employees waiting, possibly for an extended post-election period, to learn the results of the election.'' 85 FR at 18380 (emphasis added). At no point does the 2020 Rule endorse or adopt this commenter's view of settlement. Accordingly, my colleagues needlessly spill considerable ink setting up and knocking down straw men in this regard.

[328] In particular, my colleagues claim that ''when the Board sets aside an election because of employer unfair labor practice conduct, it does not erase the memory of that election outcome and the illegalities that led to it being set aside,'' and, citing *NLRB* v. *Savair Mfg. Co.,* 414 U.S. at 277–278, they further claim that ''employees who voted against union representation under the influence of the employer's coercion may well be unlikely to change their votes in the rerun election even if they vote in the second election.'' In other words, my colleagues ostensibly believe—at least for purposes of this rulemaking—that the Board's unfair labor practice remedies are wholly inadequate to the task of restoring the necessary laboratory conditions to hold a free and fair rerun election where pertinent unfair labor practices caused an initial election to be set aside despite eight decades of experience to the contrary. Meanwhile, they ignore the reality that votes against representation by a particular union may have nothing to do with them having been cast ''under coercive conditions'' and everything to do with dissatisfaction with the union.

Compounding the error is the majority's misplaced reliance on *Savair.* There, the Court observed that employees who had signed ''recognition slips'' amounting to public ''endorsements'' of the union in exchange for the union's waiver of initiation fees may ''feel obliged to carry through on their stated intention to support the union.'' Id. In stark contrast to the situation in *Savair,* the majority here posits that individual employees who vote in an initial *secret ballot* election ''may well be unlikely'' to later change their votes in a rerun *secret ballot* election even without individual employees' union sentiments ever being revealed (and presumably without a union attempting to buy their public endorsement). Naturally, opening and counting ballots reveals only *collective* union sentiment at a moment in time, not *individual* union sentiments. The majority seems to similarly misapprehend the nature of a secret ballot election in contending that employees who vote in the union's favor in a rerun election might ''risk incurring the wrath of their employer.'' Again, individual employee sentiments on union representation are not revealed during a tally of *secret* ballots.

[329] Indeed, longstanding judicial precedent holds that the Board's traditional remedies are perfectly capable of dissipating the coercive effects of unfair labor practices so as to permit a free and fair election in all but extreme cases. See, *e.g., Somerset Welding & Steel* v. *NLRB,* 987 F.2d 777, 779, 782 (D.C. Cir. 1993) (disapproving ''the Board's apparent partiality for bargaining orders'' and holding that '' 'where a fair rerun election is possible, it must be held' '' (quoting *Avecor, Inc.* v. *NLRB,* 931 F.2d 924, 934 (D.C. Cir. 1991)); *M.P.C. Plating, Inc.* v. *NLRB,* 912 F.2d 883, 888 (6th Cir. 1990) (stating that ''the election process is the preferred method'' and a bargaining order is warranted only in ''extreme cases''); *Rapid Manufacturing Co.* v. *NLRB,* 612 F.2d 144, 151 (3d Cir. 1979) (denying enforcement of bargaining order where record failed to show that possibility of ensuring a fair election was slight); *NLRB* v. *Pilgrim Foods, Inc.,* 591 F.2d 110, 120 (1st Cir. 1978) (denying enforcement of bargaining order where record did not show that the company would ignore the Board's traditional cease-and-desist order); *First Lakewood Associates* v. *NLRB,* 582 F.2d 416, 424 (7th Cir. 1978) (denying enforcement of bargaining order because the impact of the employer's violations ''will have dissipated prior to the next election, especially if the Board's ordinary remedies of a cease and desist order and a posted notice intervene''); *NLRB* v. *Ship Shape Maintenance Co.,* 474 F.2d 434, 442 (D.C. Cir. 1972) (denying enforcement of bargaining order because even though the unfair labor practice ''rendered the meaningful holding of that particular election impossible . . . . this does not mean that the effects of this unfair labor practice were sufficiently pervasive and lingering to warrant a determination that a subsequent election could not be held which would be reasonably free from the adverse influence of the Company's unlawful action''). Accordingly, there is no valid reason for my colleagues to assume that the Board's traditional remedies for pertinent unfair labor practices will necessarily be inadequate to ensure a fair rerun election in those cases where an initial election was held but later set aside under the 2020 Rule.

[330] The majority overstates the risk of employees refusing to vote for the union in a rerun election after the union's loss in an initial election held ''under coercive conditions'' occasioned by a meritorious unfair labor practice. Employees voting in second (or third) elections under noncoercive conditions, *i.e.,* after the unfair labor practices were fully remedied, have repeatedly demonstrated a willingness to consider union representation. For instance, in each of the following cases, the employer violated Sec. 8(a)(1) or Sec. 8(a)(3) and (1), the union lost the initial election, and records

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disagree with my colleagues that the mere filing of an unfair labor practice charge alleging conduct that, if proven, would create a ''coercive atmosphere'' as a matter of law imposes a ''duty'' on the Board not to conduct an election. On the contrary, as noted above, the Board has a duty ''to resolve questions of representation by holding elections, and that duty is not discharged where the Board does not process a representation petition, especially where there is no legitimate basis for delaying an election.'' Id. If the union loses the election and the allegation proves meritorious, the election results are set aside. Thus, any potential ''coercive atmosphere'' is fully dealt with under the Board's existing representation rules, including the procedures set forth in the 2020 Rule.[331]

Relatedly, the majority denies the reality that the Board's ruling in *Rieth-Riley Construction Co.,* 371 NLRB No. 109 (2022)—preserving the use by regional directors of merit-determination dismissals of election petitions in the face of pertinent unfair labor practices—undermines the justification for returning to their favored ''historical'' blocking charge policy. Citing *Rieth-Riley,* my colleagues stress that the merit-determination dismissal process is an ''aspect of the blocking charge policy'' that applies exclusively to Type II charges, *i.e.,* those that are ''inherently inconsistent with the petition itself.'' But they fail to acknowledge that even were one to generally accept their rationale for returning to the pre-2020 blocking charge policy—and I do not—there would be no need for that policy to be applied to Type II charges given that merit-determination dismissals continue to be available alongside the employee free choice protections embodied in the 2020 Rule. Indeed, the 2020 Rule already provides a vote-and-impound procedure for pertinent unfair labor practice charges and accompanying requests to block (1) violations of Section 8(a)(1) and 8(a)(2) or Section 8(b)(1)(A) of the Act that challenge the circumstances surrounding the petition or the showing of interest submitted in support of the petition, or (2) that an employer has dominated a union in violation of Section 8(a)(2) and seeks to disestablish a bargaining relationship. In these circumstances, the election is held and the ballots are be impounded for up to 60 days from the conclusion of the election (or if a complaint issues during the 60-day period, until there is a final determination regarding the complaint allegation and its effect, if any, on the election petition).

Significantly, there is no indication that the majority has engaged in reasoned decision-making by seriously considering alternatives to the pre-2020 blocking charge policy. Given the protections afforded by the 2020 Rule and merit-determination dismissal procedure taken together, as well as the established fact that unions have frequently abused the pre-2020 blocking charge policy to indefinitely delay decertification elections for both types of petitions, the majority—in reinstating that policy—could have modified it to, for instance, include durational limits on an election block. Specifically, the majority might limit the duration of a Type II charge's block of an election to 60 days, with regional directors instructed to accord such cases investigative priority, and with the possibility for an extension of the block beyond 60 days where the employer refuses to cooperate with the Region's investigation. But unfortunately, my colleagues show no interest in cabining the duration of a block for any type of election petition, or in adopting any other reform alternative for that matter. Rather, they assure us that a wholesale return to the pre-2020 blocking charge policy is necessary and sufficient, even for Type II charges, because the regional director may not get around to investigating the charge in time to make a merit determination and consider dismissal before being required to hold an election under the 2020 Rule. This is no answer. Again, the majority could modify the pre-2020 blocking charge policy in some fashion, such as by including durational limits, to prevent abuse of the process rather than give

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maintained in the Board's NxGen case-processing system reveal that the union won the second election: *Kumho Tires Georgia,* 370 NLRB No. 32 (2020); *Union Tank Car Co.,* 369 NLRB No. 120 (2020); *Pacific Coast Sightseeing Tours & Charters, Inc.,* 365 NLRB No. 131 (2017); *First Student, Inc.,* 359 NLRB 1090 (2013). The union did so even where the employer had committed extensive and egregious unfair labor practices. See *Kumho Tires Georgia* (finding that employer repeatedly interrogated employees, repeatedly threatened loss of customers, loss of jobs, and plant closure, and threatened loss of benefits, transfer of work, and that electing the union would be an exercise in futility). Plainly then, the Board's traditional remedies are capable of rectifying the harm caused to the election process by pertinent unfair labor practices such that unions can and do win rerun elections.

[331] The Board also remains free to redress the harm from certain serious unfair labor practices by issuing a general bargaining order. See generally *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575 (1969). My colleagues claim to have discovered an incongruity between holding ''elections in virtually all cases (no matter the severity of the employer's unfair labor practices) because of the availability of a rerun election'' and ''the Supreme Court's approval in *Gissel* of the Board's practice of *withholding* an election or rerun election and issuing a bargaining order'' in certain cases involving serious unfair labor practices. No such incongruity exists because, pursuant to the 2020 Rule, elections conducted under coercive conditions based on relevant meritorious unfair labor practices paired with a request to block will not be given legal effect and can be rerun *or,* where circumstances warrant, replaced with an affirmative bargaining order consistent with *Gissel*. See 85 FR at 18380 (''If the charge is found to have merit in a final Board determination, we will set aside the election and either order a second election or issue an affirmative bargaining order, depending on the nature of the violation or violations found to have been committed.''). Importantly, the fact that, in rare cases, employee free choice rights may be better protected by a bargaining order than by a rerun election does not justify the majority's general denial of the right to a prompt election to employees filing decertification petitions.

Finally, my colleagues claim that ''under the Board's limited remedial authority the Board can (absent a showing of a card majority) only conduct a second election after the unfair labor practice conduct—that interfered with the initial election—has been remedied certainly does not mean that requiring employees to vote under coercive conditions and then giving them a second chance to vote puts the employees and the labor organization at issue in the position that most closely approximates the position they would have occupied had no party committed unfair labor practices.'' The majority also claims that ''a return to the pre-April 2020 status quo better protects employee rights by putting the unit employees in a position that more closely approximates the position that the unit employees would have been in had no party committed unfair labor practices interfering with employee free choice.'' These claims rest on the faulty premise that a rerun election is a remedy. Plainly it is not. Whereas the Board *orders* remedies, it merely *directs* rerun elections after the appropriate remedies have been applied. It is not the purpose of a rerun election to put employees in the position they would have been in had no unfair practices ever been committed. Rather, that remedial purpose is accomplished by the traditional remedies the Board orders before the rerun election is directed.

In this connection, I reject my colleagues' extraordinary claim that one such traditional remedy, ''the posting of the remedial notice[,] reminds employees of those illegalities.'' This suggestion is absurd on its face. Posted remedial notices inform employees that a respondent's actions were found to be unlawful and that there were consequences for its unlawful actions. Posted remedial notices also inform employees that the unlawful actions have been remedied and reassures employees that neither those nor ''like or related'' unlawful actions will be committed in the future. Both components have long been viewed as sufficient to cleanse the atmosphere of the effects of the unfair labor practices before directing a rerun election. In fact, if my colleagues are actually worried about some negative lingering effect of posting remedial notices, I am baffled as to why they continue to order them in every case in which the Board finds that the Act has been violated. Or, for that matter, why they cite no Board decision voicing a similar concern about posting remedial notices. The answer, of course, is that my colleagues cannot actually be concerned about this.

Despite my colleagues' suggestions to the contrary, the 2020 Rule has protected employee free choice in cases of relevant, meritorious unfair labor practices through the Board's ordering and applying traditional remedies to cleanse the atmosphere from the effects of those unfair labor practices and to restore laboratory conditions before directing a rerun election. In contrast, the majority's return to the ''historical'' blocking charge policy better protects the choice of unions to remain in place as the exclusive representatives of bargaining units irrespective of unit employees' wishes.

unions and regional directors carte blanche to indefinitely delay elections based on blocking charges. Lastly, as discussed, the majority misses the mark in claiming that the offer of proof and witness availability requirements—which the 2020 Rule retained—are sufficient, standing alone, to curb any abuse of the blocking charge policy. Professor Hirsch—who has suggested the use of durational limits for blocking charges, among other reform alternatives to curb abuse—did not think so,[332] and neither do I.

The majority additionally claims that ''opening and counting ballots, yet delaying the certification of the results, might . . . frustrate employees who must await the outcome of the Board's investigation of the charge to learn whether the results of the election will be certified and, at worst, actively mislead them by conveying a materially false impression of the level of union support.'' According to my colleagues, application of the 2020 Rule may also cause employees to feel frustration at being ''required to vote under coercive circumstances.'' The reason for my colleagues' views is easy to understand; apparently, they have less faith in employees' intelligence than I do. They can rest assured that unions will be highly motivated to explain to employees why election results have not been certified and should be disregarded. Moreover, even where a regional director makes an investigatory determination of merit, the relevant charge may well turn out to have been meritless after a full adjudication before the Board, meaning that the ballots for that case would not have been ''vote[d] under coercive circumstances.'' See 85 FR at 18377. Similarly, where a regional director's investigation results in a relevant charge's dismissal, employee ballots in such a case plainly would not have been ''vote[d] under coercive circumstances,'' and it is entirely appropriate that employees promptly learn the election results in that case. Additionally, my colleagues discount the benefit to employees (and to their confidence in the Board's processes) of promptly learning the results of an election in which they voted. Where a statutory question of representation exists, employees should be entitled to a prompt answer to that question, even where unfair labor practice charges later deemed meritorious delay the final resolution of the question.

Rejecting the 2020 Rule's concern with safeguarding employee free choice by conducting elections in the face of meritless unfair labor practice charges, the majority rather audaciously asserts that the historical blocking-charge policy ''best preserves employee free choice in representation cases,'' even though some employees might never get to vote due to a blocked petition. See, *e.g., Geodis Logistics, LLC,* 371 NLRB No. 102 (2022) (blocking charge delayed elections for four years; employee petitioner no longer employed in unit); *Cablevision Systems Corp.,* 367 NLRB No. 59 (2018) (blocking charge followed by regional director's misapplication of settlement-bar doctrine delayed processing until December 19, 2018, of valid RD petition filed on October 16, 2014; employee petitioner thereafter withdrew petition). Indeed, the passage of time while a charge is blocked, and the attendant turnover in the workforce of employees opposed to a particular union, inures to the benefit of unions attempting to preserve their representative status, at the expense of employee choice. The majority dismisses the 2020 Rule's concern for such employees by pointing out the obvious fact that some turnover is ''unavoidable'' over the days and weeks between a petition's filing and the election. In doing so, my colleagues discount the potential for blocking charges to cause *years* of delay, during which extensive employee turnover is all too likely.[333]

Taking the debate from the obvious to the absurd, the majority faults the 2020 Rule for failing to ''eliminate the risk that employees who end up voting in a valid election (*i.e.,* an election whose results are certified) will not be those who were employed at the time of the petition filing.'' Of course, this argument misses the point entirely. The 2020 Rule is not based on eliminating this risk. Rather, it is based, in part, on mitigating the risk of turnover where reasonably possible, consistent with ensuring that election results are not certified where the Board determines that the employer committed pertinent unfair labor practices that affected the outcome. Accordingly, to the extent practicable, employees employed at the time a petition is filed should get the opportunity to promptly express a choice of representative. The majority, by contrast, would rather assist unions facing possible ouster by facilitating election delay while the union waits for its opponents to head for the exits and works to rebuild support among the undecideds. Crucially, the 2020 Rule facilitates prompt elections while safeguarding employee free choice. Indeed, a prompt opportunity for employees to vote in a Board election *itself* safeguards employee free choice. See *NLRB* v. *A.J. Tower Co.,* 329 U.S. at 331 (observing that ''within [the] democratic framework'' of Section 9(c) of the Act, ''the Board must adopt policies and promulgate rules and regulations in order that employees' votes may be recorded accurately, efficiently *and speedily*'' (emphasis added)). Finally, the majority asserts that employee turnover will necessarily occur in the event an unfair labor practice charge proves meritorious and a rerun election is directed. But that result is acceptable where a charge has merit. The goal should be to limit employee turnover resulting from blocking petitions for extended periods based on any and every unproven and potentially meritless allegation of employer conduct that could interfere with employee free choice or taint the petition.

Next, the majority makes the fantastical claim that the 2020 Rule's modification of the blocking-charge policy to permit elections to be conducted despite pending unfair labor practice charges somehow ''creates a perverse incentive for unscrupulous employers to commit unfair labor practices'' because, in my colleagues' estimation, the ''predicable results'' of such unlawful conduct will be (1) the expenditure of unions' resources on elections that ''will not reflect the free choice of the employees,'' and (2) ''a sense among employees that seeking to exercise their Section 7 rights is futile.'' This fallacious parade of horribles leads nowhere. It defies reason that employers would deliberately expose their businesses to unfair labor practice litigation and liability, and the financial consequences thereof, merely to compel unions to expend resources on an election that the union might well win.

[332] Jeffrey M. Hirsch, *NLRB Elections: Ambush or Anticlimax?,* 64 Emory L.J. 1647, 1664 (2015) (observing that ''[t]he Board's new [2014] rules indirectly affected the blocking charge policy by requiring parties to file an offer of proof to support a request for a stay, but that requirement is unlikely to change much, if anything. Instead, the Board should have explored new rules such as lowering the presumption that favors staying elections in most circumstances or setting a cap on the length of stays, either of which might have satisfied the blocking charge policy's main purpose while reducing abuse.'').

[333] As noted above, just last year my colleagues essentially reinstated the 2014 Election Rule (79 FR 74308), which implemented a variety of amendments to the Board's representation procedures designed to speed up elections in the initial organizing context. *Representation-Case Procedures,* 88 FR 58076 (2023). It is striking that my colleagues made it a priority to ensure that initial representation elections—which unions typically favor—will be held days or weeks sooner, but then found it necessary to promulgate blocking charge rules that, based on past experience, will have the result of delaying decertification elections—which unions typically disfavor—for months, if not *years.*

In any event, such employers would themselves presumably have to commit resources to an election. Meanwhile, as employers are undoubtedly aware, any such gamesmanship would be counterproductive given that, under the 2020 Rule, if an employer commits one or more unfair labor practices that would require setting aside the election, the results of that election would not be certified. In this connection, any rational employer will be equally disincentivized from committing unfair labor practices under either the 2020 Rule or the pre-2020 blocking-charge policy—under the former, because doing so will prevent the results of the election from being given effect, and under the latter, because doing so will prevent the election from taking place. Accordingly, under either scenario, the employer is discouraged from committing unfair labor practices. Additionally, I reject the premise that holding an election (but not immediately certifying the results) in the face of pertinent unfair labor practice charges necessarily imbues employees with a sense of futility regarding the exercise of their Section 7 rights—rights that include being able to cast a vote for or against representation in a Board-supervised, secret-ballot election. Indeed, the majority completely discounts the futility that a decertification petitioner and other supporters of that petition must feel when forced to wait for years to vote in an election, assuming they are ever afforded the opportunity to do so. Lastly, the majority effectively presumes an abuse of process that is not known to have occurred, which stands in stark contrast to the recognized abuse of the Board's processes by unions seeking to preserve their representative status—an abuse that, according to my colleagues, does not merit curative action unless it is shown to be ''the norm.''

Finally, my colleagues discuss claimed errors in certain data considered in the notice of proposed rulemaking preceding the 2020 Rule. The Board appropriately responded to these concerns in the 2020 Rule as follows: ''Even accepting those claims as accurate, the remaining undisputed statistics substantiate the continuing existence of a systemic delay that supports our policy choice to modify the current blocking-charge procedure that does not, and need not, depend on statistical analysis.'' 85 FR at 18377. Further, the 2020 Board, quoting the AFL–CIO's comment, observed that ''[b]locking elections delays elections. That is undeniably true and requires no 'statistical evidence' to demonstrate.'' Id. Finally, the Board reiterated that ''anecdotal evidence of lengthy blocking charge delays in some cases, and judicial expressions of concern about this, remain among the several persuasive reasons supporting a change that will assure the timely conduct of elections without sacrificing protections against election interference.'' Id. I agree. As the majority acknowledges, the Board is free to ''make a policy choice that does not depend on statistical analysis.'' The Board did so in the 2020 Rule—and now, at the unfortunate expense of the gains in safeguarding employee free choice made there, the majority claims the right to do so now.

For all the reasons set forth above, the 2020 Rule's modifications to the Board's blocking-charge policy were prompted by real and serious abuses, and they successfully addressed those abuses. Those modifications should be retained. Instead, the majority effectively rescinds them. I cannot join them in taking this step.

II. The Voluntary-Recognition Bar

When it comes to ascertaining whether a union enjoys majority support, a Board-conducted election is superior to union-authorization cards for several reasons, not least of which is that in the former, employees vote by secret ballot, whereas an employee presented with a card for signature makes an observable choice and is therefore susceptible to group pressure. For this reason and others, discussed below, the 2020 Rule reinstated a framework, previously adopted through adjudication, that provides employees a limited window period, following their employer's card-based voluntary recognition of a union as their bargaining representative, within which to petition for a secret-ballot election, and during which the start of the voluntary-recognition election bar is paused until that window closes without a petition being filed. I believe this aspect of the 2020 Rule appropriately balances the sometimes-competing policies of labor-relations stability and employee free choice. My colleagues throw out this valuable framework. Because their final rule strikes the wrong balance, at the expense of employee free choice, I dissent.

A. Background

Longstanding precedent holds that a ''Board election is not the only method by which an employer may satisfy itself as to the union's majority status [under Section 9(a) of the Act].'' *United Mine Workers* v. *Arkansas Flooring Co.,* 351 U.S. 62, 72 fn. 8 (1956). Voluntary-recognition agreements based on a union's showing of majority support are undisputedly lawful. *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 595–600. However, it was not until *Keller Plastics Eastern, Inc.,* 157 NLRB 583 (1966), that the Board addressed the issue of whether a Section 9(a) bargaining relationship established by voluntary recognition can be disrupted by the recognized union's subsequent loss of majority status. Although the union in *Keller Plastics* had lost majority support by the time the parties executed a contract little more than three weeks after voluntary recognition, the Board rejected the General Counsel's claim that the employer was violating the Act by continuing to recognize a nonmajority union as the employees' representative. The Board reasoned that ''like situations involving certifications, Board orders, and settlement agreements, the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining. Such negotiations can succeed, however, and the policies of the Act can thereby be effectuated, only if the parties can normally rely on the continuing representative status of the lawfully recognized union for a reasonable period of time.'' Id. at 586. Shortly thereafter, the Board extended this recognition-bar policy to representation cases and held that an employer's voluntary recognition of a union would immediately bar the filing of an election petition for a reasonable amount of time following recognition. *Sound Contractors,* 162 NLRB 364 (1966).

From 1966 until 2007, the Board tailored the duration of the immediate recognition bar to the circumstances of each case, stating that what constitutes a reasonable period of time ''does not depend upon either the passage of time or the number of calendar days on which the parties met. Rather, the issue turns on what transpired during those meetings and what was accomplished therein.'' *Brennan's Cadillac, Inc.,* 231 NLRB 225, 226 (1977). In some cases, a few months of bargaining were deemed enough to give the recognized union a fair chance to succeed, whereas in other cases substantially more time was deemed warranted. Compare *Brennan's Cadillac* (finding employer entitled to withdraw recognition after 4 months), with *MGM Grand Hotel,* 329 NLRB 464, 466 (1999) (finding a bar period of more than 11 months was reasonable considering the large size of the unit, the complexity of the bargaining structure and issues, the parties'

frequent meetings and diligent efforts, and the substantial progress made in negotiations).

In *Dana Corp.,* 351 NLRB 434 (2007), a Board majority reviewed the development of the immediate recognition-bar policy and concluded that it ''should be modified to provide greater protection for employees' statutory right of free choice and to give proper effect to the court- and Board-recognized statutory preference for resolving questions concerning representation through a Board secret-ballot election.'' Id. at 437.[334]

Drawing on the General Counsel's suggestion in his amicus brief of a modified voluntary-recognition election bar, the *Dana* majority held that ''[t]here will be no bar to an election following a grant of voluntary recognition unless (a) affected unit employees receive adequate notice of the recognition and of their opportunity to file a Board election petition within 45 days, and (b) 45 days pass from the date of notice without the filing of a validly-supported petition. These rules apply notwithstanding the execution of a collective-bargaining agreement following voluntary recognition. In other words, if the notice and window-period requirements have not been met, any [post-recognition] contract will not bar an election.'' 351 NLRB at 441. The recognition-bar modifications did not affect the obligation of an employer to bargain with the recognized union during the post-recognition open period, even if a decertification or rival petition was filed. Id. at 442.

The *Dana* majority emphasized ''the greater reliability of Board elections'' as a principal reason for the announced modification. *Dana Corp.,* 351 NLRB at 438. In this respect, while a majority card showing has been recognized as a reliable basis for the establishment of a Section 9(a) bargaining relationship, authorization cards—as the Supreme Court has found—are ''admittedly inferior to the election process.'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 603. Several reasons were offered in support of this conclusion. ''First, unlike votes cast in privacy by secret Board election ballots, card signings are public actions, susceptible to group pressure exerted at the moment of choice.'' *Dana Corp.,* 351 NLRB at 438. This is in contrast to a secret-ballot vote cast in the ''laboratory conditions'' of a Board election, held ''under the watchful eye of a neutral Board agent and observers from the parties,'' [335] and free from immediate observation, persuasion, or coercion by opposing parties or their supporters. ''Second, union card-solicitation campaigns have been accompanied by misinformation or a lack of information about employees' representational options.'' Id. Particularly in circumstances where voluntary recognition is preceded by an employer entering into a neutrality agreement with the union, which may include an agreement to provide the union access to the workplace for organizational purposes, employees may not understand they even have an electoral option or an alternative to representation by the organizing union. Id. ''Third, like a political election, a Board election presents a clear picture of employee voter preference at a single moment. On the other hand, card signings take place over a protracted period of time.'' Id. A statistical study cited in several briefs and by the *Dana* majority indicated a significant disparity between union card showings of support obtained over a period of time and ensuing Board election results. Id. (citing McCulloch, *A Tale of Two Cities: Or Law in Action,* Proceedings of ABA Section of Labor Relations Law 14, 17 (1962)). Lastly, the Board election process provides for post-election review of impermissible electioneering and other objectionable conduct, which may result in the Board invalidating the election results and conducting a second election. Id. at 439. ''There are no guarantees of comparable safeguards in the voluntary recognition process.'' Id.

In *Lamons Gasket Company,* 357 NLRB 739 (2011),[336] a new Board majority overruled *Dana Corp.* and reinstated the immediate voluntary-recognition election bar. The *Lamons Gasket* majority emphasized the validity of voluntary recognition as a basis for establishing a Section 9(a) majority-based recognition. Further, citing Board statistical evidence that employees had decertified the voluntarily recognized union in only 1.2 percent of the total cases in which a *Dana* notice was requested,[337] the majority concluded that *Dana's* modifications to the voluntary-recognition bar were unnecessary and that the *Dana* majority's concerns about the reliability of voluntary recognition as an accurate indicator of employee choice were unfounded. The *Lamons Gasket* majority criticized the *Dana* notice procedure as compromising Board neutrality by ''suggest[ing] to employees that the Board considers their choice to be represented suspect and signal[ing] to employees that their choice should be reconsidered.'' Id. at 744. The majority opinion also defended the voluntary-recognition bar as consistent with other election bars that are based on a policy of assuring that '' 'a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.' '' Id. (quoting *Franks Bros. Co.* v. *NLRB,* 321 U.S. 702, 705 (1944)). The majority viewed the *Dana* 45-day open period as contrary to this policy by creating a period of post-recognition uncertainty during which an employer has little incentive to bargain, even though technically required to do so. Id. at 747. Finally, having determined that a return to the immediate recognition-bar policy was warranted, the *Lamons Gasket* majority applied its holding retroactively. In addition, based on the Board's decision in *Lee Lumber & Building Material Corp.,* 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002), the majority defined the reasonable period of time during which a voluntary recognition would bar an election as no less than six months and no more than one year from the date of the parties' first bargaining session. *Lamons Gasket,* supra at 748.[338]

[334] The 2007 *Dana* decision followed a decision granting review, consolidating two cases, and inviting briefing by the parties and amici on the voluntary recognition-bar issue. *Dana Corp.,* 341 NLRB 1283 (2004). In response, the Board received 24 amicus briefs, including one from the Board's General Counsel, in addition to briefs on review and reply briefs from the parties. *Dana Corp.,* 351 NLRB at 434 fn. 2.

[335] Id. at 439.

[336] Similar to the *Dana* proceeding, the 2011 *Lamons Gasket* decision followed a decision granting review, consolidating two cases, and inviting briefing by the parties and amici on the voluntary-recognition-bar issue. *Rite Aid Store #6473,* 355 NLRB 763 (2010). In response, the Board received 17 amicus briefs, in addition to briefs on review and reply briefs from the parties. *Lamons Gasket,* 357 NLRB at 740 fn. 1.

[337] ''As of May 13, 2011, the Board had received 1,333 requests for *Dana* notices. In those cases, 102 election petitions were subsequently filed and 62 elections were held. In 17 of those elections, the employees voted against continued representation by the voluntarily recognized union, including 2 instances in which a petitioning union was selected over the recognized union and 1 instance in which the petition was withdrawn after objections were filed. Thus, employees decertified the voluntarily recognized union under the *Dana* procedures in only 1.2 percent of the total cases in which *Dana* notices were requested.'' Id. at 742.

[338] Under *Lamons Gasket,* the recognition bar takes effect immediately, but the reasonable period for bargaining does not begin to run until the parties' first bargaining session. Accordingly, the bar period may well continue for more than one year from the date recognition is extended—*longer* than the certification-year bar following a union election win, which runs from the date the union is certified (assuming the employer does not unlawfully refuse to bargain with the certified union).

Then-Member Hayes dissented in *Lamons Gasket,*[339] arguing that *Dana* was correctly decided for the policy reasons stated there, most importantly the statutory preference for a secret-ballot Board election to resolve questions of representation under Section 9 of the Act. He noted that the *Lamons Gasket* majority's efforts to secure empirical evidence of *Dana's* shortcomings by inviting briefs from the parties and amici ''yielded a goose egg.'' Id. at 750 (''Only five respondents sought to overturn *Dana,* and only two of them supported their arguments for doing so with the barest of anecdotal evidence.'') (footnotes omitted). Consequently, the only meaningful empirical evidence came from the Board's own election statistics. In this regard, Member Hayes disagreed with the majority's view that the number of elections held and votes cast against the recognized union proved the *Dana* modifications were unnecessary. He pointed out that the statistics showed that in one of every four elections held, an employee majority voted against representation by the incumbent recognized union. While that 25-percent rejection rate was below the recent annual rejection rate for all decertification elections, it was nevertheless substantial and supported retention of a notice requirement and brief open period. Id. at 751.

Under *Lamons Gasket,* the imposition of the immediate recognition bar, followed by the execution of a collective-bargaining agreement resulting in a contract bar,[340] can preclude the possibility of conducting a Board election contesting the initial non-electoral recognition of a union as employees' exclusive bargaining representative for as many as four years. Indeed, because under *Lamons Gasket* the recognition-bar period begins to run only when the parties first meet to bargain, which may be months after recognition is granted, a secret-ballot election may be barred for more than four years.

B. The 2020 Rule's Modifications to the Voluntary-Recognition Bar

The 2020 Rule largely reinstated the *Dana* notice period, including the 45-day open period during which a valid election petition may be filed challenging an employer's voluntary recognition of a labor organization. However, in response to certain comments, the Board modified the *Dana* framework in several respects. First, the *Dana* notice period applies only to voluntary recognition extended on or after the effective date of the 2020 Rule and to the first collective-bargaining agreement reached after such voluntary recognition. Second, the 2020 Rule clarified that the employer ''and/or'' labor organization must notify the Regional Office that recognition has been granted. Third, in contrast to the 2019 proposed rule, the 2020 Rule specified where the notice should be posted (*i.e.,* ''in conspicuous places, including all places where notices to employees are customarily posted''), eliminated the 2019 proposed rule's specific reference to the right to file ''a decertification or rival-union petition'' and instead referred generally to ''a petition,'' added a requirement that an employer distribute the notice to unit employees electronically if the employer customarily communicated with its employees by such means, and set forth the wording of the notice. 85 FR at 18370, 18399–18400.

C. Critique of the Majority's Return to the Immediate Voluntary-Recognition Bar

The majority now rescinds current Section 103.21 of the Board's Rules and Regulations—adopted in the 2020 Rule—and returns to (and codifies) the Board's recognition-bar jurisprudence as it existed under *Lamons Gasket,* supra, *i.e.,* an immediate recognition bar that lasts a minimum of six months and a maximum of one year, *not* from the date recognition is granted, but from the date of the parties' first bargaining session—followed, of course, by a contract bar of up to three years if the parties execute a collective-bargaining agreement. My colleagues' reasons for doing so contain few surprises. Predictably, they refuse to acknowledge the 2020 Rule's essential contribution to the statutory policy of safeguarding employee free choice, claiming instead that the *Lamons Gasket* rule allowing no opportunity for a Board-supervised election immediately following a voluntary recognition better serves the freedom of employees to choose their representatives. For reasons explained below, my colleagues err in proposing this counterproductive change.

Initially, based on the Board's statistical data discussed above from the years *Dana* was in effect, as well as similar post–2020 Rule data, the majority asserts that ''the Board's administrative experience'' shows that ''employees almost never reject the recognized union,'' and they characterize the 2020 Rule's notice-and-election procedure as ''serv[ing] no clear legitimate purpose'' and as ''a waste of the Board's resources, as well as those of the employer and the union, even apart from the procedure's harm to the collective-bargaining process.'' The majority defines this supposed ''harm to the collective-bargaining process'' as ''the potential harm to effective collective bargaining'' and ''a reasonable tendency to interfere with effective collective bargaining.'' Accordingly, my colleagues claim, the notice-and-election procedure ''is not necessary to preserve employee free choice.'' As I will explain, however, because each of these rationales is easily rebutted, my colleagues' reliance on these conclusions fails to demonstrate reasoned decision-making.[341]

To begin, there is no merit to the majority's supposedly data-driven argument that the 2020 Rule ''is not necessary to preserve employee free choice'' inasmuch as successful electoral overrides of voluntary recognition appear rare. Congress created the Act, as well as the Board, in significant part, to protect all employees' statutory rights to choose whether to be represented by a particular union, irrespective of whether they choose to exercise those rights. In contrast, my colleagues' final rule renders conclusive voluntary recognitions of unions without the right to a Board-conducted election—in which all employees may participate—to test the adequacy of union support and thereby ensure employee free choice. Even putting aside that fundamental point, my colleagues fail to say how many electorally overturned voluntary recognitions it would take to warrant retaining the modified *Dana* notice-and-election framework. Might a five percent override rate do so in my colleagues' view? How about ten percent? They cannot answer this question because, in reality, all employees should have the right to test the validity of a voluntary recognition.[342] The Board need not and

[339] Id. at 748–754.

[340] Collective-bargaining agreements may bar the processing of an election petition for a period of up to three years, insulating a union from challenges to its majority status during that period. See *General Cable Corp.,* 139 NLRB 1123, 1125 (1962).

[341] In the 2022 notice of proposed rulemaking, the majority claimed that the notice requirement of the 2020 Rule ''invites'' the filing of an election petition, thereby compromising the Board's ''neutrality.'' See 87 FR at 66910. Despite acknowledging that several commenters continue to advance such arguments, my colleagues appear to have largely abandoned them, stating that they ''need not and do not rely on these arguments'' and expressly refraining from taking a position on the *Lamons Gasket* Board majority's embrace of ''neutrality'' arguments.

[342] My colleagues cite their recent decision in *Cemex Construction Materials, Pacific, LLC,* 372 NLRB No. 130 (2023), the holding of which they summarize as follows: ''an employer violates Sec. 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as the

should not accept possibly unsupported voluntary recognitions at any frequency, particularly considering that a simple procedure to prevent them is available and already in place.

In point of fact, the majority's attempt to justify the elimination of the employee protections put into effect in the 2020 Rule by characterizing the ''error'' rate as low actually undermines their position. Certainly, it undermines their concern that the modified *Dana* framework undermines either the voluntary-recognition process or the statutory policies the majority discusses as supporting it (*e.g.,* ''effective collective bargaining'' and ''bargaining stability'' in labor relations).[343] Furthermore, if the modified *Dana* procedures set forth in the 2020 Rule so rarely result in a change in representation, one is left to question why the significant amount of resources spent on the instant rulemaking was necessary in the first place.[344]

Additionally, I agree with the view expressed in the 2020 Rule that the *Dana* framework ''serve[s] its intended purpose of assuring employee free choice in all . . . cases at the outset of a bargaining relationship based on voluntary recognition, rather than 1 to 4 years or more later,'' and that ''giving employees an opportunity to exercise free choice in a Board-supervised election without having to wait years to do so is . . . solidly based on and justified by . . . policy grounds.'' 85 FR at 18383.[345] Indeed, the majority acknowledged in its 2022 notice of proposed rulemaking that ''the Board's approach to the voluntary-recognition bar has varied, [and] the Board [and the federal courts] consistently [have] viewed the issue as presenting a policy choice for the Board to make.'' 87 FR at 66909. My colleagues state that they ''disagree with the policy choice reflected by the 2020 rule . . . [and] make a different policy choice here.''

My colleagues also attempt to justify their action by claiming that the modified *Dana* framework promulgated in the 2020 Rule is a ''a waste of the Board's resources, as well as those of the employer and the union.'' This assertion is clearly without merit. There is hardly a more important use of the Board's resources than to protect employees' fundamental statutory rights.[346] Further, it is not clear how simply posting a *Dana* notice imposes a significant burden on Board resources; any purported burden arises only when employees choose to exercise their right to confirm that the majority of the unit actually wishes to be represented by the voluntarily recognized union.[347]

Sec. 9(a) representative by the majority of employees in an appropriate unit unless the employer promptly files an RM petition pursuant to Sec. 9(c)(1)(B) of the Act *to test the union's majority status* or the appropriateness of the unit, assuming that the union has not already filed an RC petition pursuant to Sec. 9(c)(1)(A).'' (emphasis added). In other words, my colleagues are comfortable compelling an employer to either ''voluntarily'' recognize a union or file an election petition ''to test the union's majority status,'' yet they are decidedly uncomfortable with the concept of allowing the *employees* on whom such ''voluntary'' recognition is imposed to themselves file an election petition ''to test the union's majority status'' once such recognition has been extended. This incongruity in the majority's approach to *establishing* versus *preserving* an employer's recognition of a union is impossible to miss.

[343] At least one commenter agrees. See Comment of Coalition for a Democratic Workplace. No matter, according to the majority, because ''even *potential* obstacles to productive bargaining should be avoided.'' (emphasis added). I happen to think that the Board's rulemaking resources would be better spent solving *actual,* rather than ''potential,'' problems. Meanwhile, the majority's suggestion that any argument based on a low error rate ''that the procedure does not, in fact, cast doubt on the union's status'' somehow ''would confirm that the procedure is only a formality'' is plainly a non sequitur. Contrary to my colleagues, it does not follow from a lack of a specific harm being caused by the notice-and-election procedure that no benefit from that procedure may obtain. Indeed, as noted, the procedure promotes and protects employee free choice by allowing employees to test the validity of a particular voluntary recognition of a union by an employer to ensure that the recognition extended is adequately supported.

[344] At least one commenter agrees. See Comment of Coalition for a Democratic Workplace.

[345] I disagree with my colleagues' suggestion that due to ''intervening events or . . . changing minds,'' ''the fact that an election *following* voluntary recognition results in the union's defeat does not necessarily demonstrate that the union lacked reliable majority support *at the time of recognition.*'' Even accepting, arguendo, the majority's premise, the collection of authorization cards is similarly asynchronous, yet the majority does not question whether, at the moment of a union's demand for recognition, all employees who signed cards still (or ever did) support the employer's recognition of the union as their exclusive bargaining representative. The possibility that employees who sign authorization cards (or, for that matter, disaffection petitions) will change their minds is very real and has been the cause of some dispute between the Board and reviewing courts. See, *e.g., Johnson Controls, Inc.,* 368 NLRB No. 20 (2019) (discussing employees who sign both a disaffection petition and authorization card); *Struthurs-Dunn, Inc.,* 228 NLRB 49, 49 (1977) (holding authorization card not effectively revoked until union notified of revocation), enf. denied 574 F.2d 796 (3d Cir. 1978).

But in any event, my colleagues miss the point here. The *Dana* framework readopted (with modifications) in the 2020 Rule is not designed to cast doubt on the validity of voluntary recognition, but to afford employees the opportunity to test the union's majority support—and the validity of the resulting voluntary recognition—through the statutorily-preferred method of a Board-supervised election. The election process allows a test of majority support at a given moment in time, whereas authorization cards may be gathered over weeks or months without regard to whether the card signers continue to support the union by the time a demand for recognition is made (unless the card signers affirmatively requested the return of their signed cards). Likewise, the majority's unrealistic hypothetical scenario comparing ''two free and fair elections held in quick succession,'' but yielding different results, to testing the validity of a voluntary recognition with a subsequent election misses the mark. Even accepting the puerile premise of this two-election hypothetical, my colleagues falsely equate their imagined scenario with the real collection of authorization cards. As I have explained and the Supreme Court has recognized, a Board-conducted election is different from and superior to card collection.

Finally, my colleagues falsely equate the certification bar to the recognition bar, particularly inasmuch under certain circumstances, both bars may begin run from the first bargaining session. But it must be emphasized that while the recognition bar attaches when recognition is extended (typically based on authorization cards), under *Lamons Gasket,* the recognition-bar period begins to run only when the parties first meet to bargain, which may be months after recognition is granted. Accordingly, the recognition bar—coupled with the contract bar—may preclude a secret-ballot election for more than four years. In contrast, the certification bar arises from the superior Board-conducted election process and the bar period ordinarily begins to run when the certification issues. Only when the employer commits a technical Sec. 8(a)(5) refusal-to-bargain violation to test the certification is the start of the bar period delayed until the parties begin bargaining. See *Volkswagen Group of America Chattanooga Operations, LLC,* 367 NLRB No. 138, slip op. at 1 (2019). As such, in the ordinary case, the recognition bar has the potential to preclude an election for longer than does the certification bar under similar circumstances.

[346] By contrast, my colleagues seem unbothered by ''wasting'' agency resources on remedial measures that have never before been deemed necessary by the Board. See, *e.g., Noah's Ark Processors, LLC,* 372 NLRB No. 80, slip op. at 17 (2023) (Member Kaplan, dissenting) (pointing out that the majority's novel visitation remedy, which in that case required regional personnel from Overland Park, Kansas, to travel to Hastings, Nebraska—a 622 mile round-trip—was a waste of taxpayers' money and an ''unnecessary expenditure of Agency resources''), enfd. 98 F.4th 896 (8th Cir. 2024) (enforcing the Board's novel remedies on procedural grounds without reaching their merits).

[347] My colleagues quote my position questioning whether ''simply posting a *Dana* notice imposes a significant burden on Board resources'' before inexplicably and falsely asserting that I ''omit[ ] reference to the second part of the procedure, which may require the Board to conduct an election.'' In fact, the second clause of the sentence from which they quote expressly recognizes that ''any purported burden arises only when employees choose to exercise their right to confirm that the majority of the unit actually wishes to be represented by the voluntarily recognized union,'' *i.e.,* when employees petition for an election, an occurrence that the majority contends is rare in any event.

Furthermore, my colleagues falsely accuse me of holding the ''tacit view that it better protects employees' fundamental statutory rights to maximize the opportunity for a minority of unit employees to overcome the prior selection of a union by the majority of employees.'' My colleagues baselessly assume that any election testing the validity of a voluntary recognition with the preferred method of a Board-conducted election—which again, they say is rare—will naturally result in a contrary determination by a minority of the bargaining unit. In doing so, they once again call into question the Board's time-tested electoral machinery. The scenario they describe—a minority of eligible voters determining an electoral outcome due to potentially low turnout—could occur in any Board-conducted election. Contrary to the majority, this possibility inheres in the practice of workplace democracy under the Act and, when it occurs, it

Continued

Finally, my colleagues' attempt to justify their action by referencing union and employer resources is astonishing. The NRLA protects the rights of employees, not employers or unions. Any suggestion that the Board should place such considerable weight on party resource expenditures in rescinding rules that serve to protect employees' fundamental statutory rights is inconsistent with congressional intent.

The 2020 Rule clearly acknowledged that, ''voluntary recognition and voluntary-recognition agreements are lawful.[348] But, as the Rule further explained, both the NLRA and the courts have made plain that a Board-supervised election is ''the Act's preferred method for resolving questions of representation.'' 85 FR at 18381. Therefore, ''the election-year bar and the greater statutory protections accorded to a Board-certified bargaining representative implicitly reflect congressional intent to encourage the use of Board elections as the preferred means for resolving questions concerning representation.'' Id. Indeed, my colleagues conceded in their notice of proposed rulemaking ''the implicit statutory preference for Board elections (insofar as certain benefits are conferred only on certified unions),'' [349] a concession they are careful not to make in their final rule. Additionally, both the Board and the courts have long recognized that secret-ballot elections are superior to voluntary recognition at protecting employees' Section 7 freedom to choose, or not choose, a bargaining representative.[350] See, *e.g., Linden Lumber Div.* v. *NLRB,* 419 U.S. 301, 304 (1974); *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 602; *Transp. Mgmt. Servs.* v. *NLRB,* 275 F.3d 112, 114 (D.C. Cir. 2002); *NLRB* v. *Cayuga Crushed Stone, Inc.,* 474 F.2d 1380, 1383 (2d Cir. 1973); *Levitz Furniture Co. of the Pacific,* 333 NLRB at 727; *Underground Service Alert,* 315 NLRB 958, 960 (1994).

As the United States Supreme Court has stated, ''secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support.'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. at 602. Although voluntary recognition is a valid method of obtaining recognition, authorization cards used in a card-check recognition process are ''admittedly inferior to the election process.'' Id. at 603.[351] In the end, protecting employee free choice, as the 2020 Rule does, is among the Board's core responsibilities under the Act, and as such, the notion that doing so is ''a waste of the Board's resources'' seriously misapprehends the Board's role and how its resources necessarily serve that role.

Finally, my colleagues claim that the 2020 Rule raises the specter of ''harm to the collective-bargaining process,'' which they define as ''the *potential* harm to *effective* collective bargaining'' and ''a reasonable tendency to interfere with *effective* collective bargaining,'' and which they believe to be inconsistent with the principle that ''a rightfully established bargaining relationship must be given a fair chance to succeed before being tested,'' which is the central rationale underlying other Board bar doctrines that protect new bargaining relationships. (emphasis added). As a result, my colleagues claim, the 2020 Rule undermines the ''bargaining stability'' necessary to negotiate and administer collective-bargaining agreements between parties to new bargaining relationships established through voluntary recognition. But the 2020 Rule's 45-day window, which the majority claims is rarely used in any event, hardly rejects the premise that new bargaining relationships must have an opportunity to succeed. After the window closes without a petition being filed, the recognition bar takes effect. Further, if, as the majority claims, ''employees almost never reject the recognized union,'' it is difficult to ascertain how the 2020 Rule ''discard[s] the critical role of bargaining stability in the administration of the Act.'' The majority cannot have it both ways. If Section 103.21's notice-and-election procedure affects relatively few bargaining relationships established through voluntary recognition, then the benefit to employee free choice of retaining that procedure clearly outweighs any modest burden caused by a few employees deciding to vindicate their statutory rights through the preferred method of a Board election.[352]

Moreover, as the 2020 Rule observed, there was ''no evidence in the record for this rulemaking that *Dana* had any meaningful impact on the negotiation of bargaining agreements during the open period or on the rate at which agreements were reached after voluntary recognition.'' Id. at 18384. Implicitly acknowledging this dearth of evidence, the majority ''invite[d] public comment on the effect of Section 103.21 on collective-bargaining negotiations.'' 87 FR at 66910 fn. 127. Unfortunately for my colleagues, supportive commenters were unable to supply them with the necessary evidence to support their theory. Indeed, they necessarily acknowledge that commenters in support of rescinding Section 103.21 ''d[id] not bring significant empirical evidence to bear'' on the question of its effect on collective bargaining. Instead, the majority reports that these commenters merely offer the Board their ''logic and experience'' suggesting that ''bargaining will be harmed,'' and my colleagues are all too ready to take their word for it in making the ''policy choice'' of rescission. Consequently, the majority resorts to rank speculation that employers ''*might* well refuse to invest the same time and effort into bargaining if the bargaining relationship might soon be terminated,'' and that unions ''*might* feel pressure to quickly produce positive results in bargaining to avoid losing support among employees—making a mutually satisfactory agreement with the employer more difficult and increasing the likelihood of labor disputes,'' if the voluntary recognition bar is delayed by the 2020 Rule's 45-day window. (emphasis added). Ultimately, however, my colleagues ''acknowledge that there likely can be no more than anecdotal evidence that the notice-and-election procedure, in fact, interferes with effective collective bargaining.'' Accordingly, they are content to eliminate the notice-and-election procedure in order to eliminate what they describe as the ''the *potential* harm to effective collective bargaining'' because, as they contend, ''even *potential* obstacles to productive bargaining should be avoided.'' (emphasis added). In my view, disturbing the status quo and rescinding an essential legal provision like Section 103.21 should be based on more than imagined harms—*i.e.,* those harms that ''might'' have the ''potential'' to occur—

does not automatically invalidate the results of Board elections conducted under laboratory conditions with the attendant procedural safeguards.

[348] Id. at 18381 and cases cited.

[349] 87 FR at 66911.

[350] 85 FR at 18381.

[351] Despite claiming that the Supreme Court in *Gissel* generally ''rejected the argument that union-authorization cards could not properly establish a union's majority support union-authorization cards constitute,'' the majority concedes, as it must, that the Court's holding pertaining to union-authorization cards arose ''in the context of issuing bargaining orders.'' Accordingly, the Court did not reach this broader issue but found only that the cards were sufficiently reliable ''where a fair election probably could not have been held, or where an election that was held was in fact set aside.'' Id. at 601 fn. 18.

[352] Relatedly, to the extent that a pending election petition might ''cause unions to spend more time campaigning or working on election-related matters rather than doing substantive work on behalf of employees,'' this is ''a reasonable trade-off for protecting employees' ability to express their views in a secret-ballot election.'' 85 FR at 18384–18385.

absent any concrete evidence that they have actually occurred in the *years* that the notice-and-election procedure has been in effect.

III. Proof of Majority-Based Recognition Under Section 9(a) in the Construction Industry

Under Section 9 of the Act, *employees* choose union representation. However, under extant Board precedent applicable to unfair labor practice cases—*Staunton Fuel & Material,* 335 NLRB 717 (2001)—unions and employers in the construction industry can install a union as the Section 9(a) representative of the employer's employees through contract language alone, regardless of whether those employees have chosen it as such, and indeed, even if the employer *has no employees at all* when it enters into that contract.[353] The 2020 Rule overruled *Staunton Fuel* for representation-case purposes, and the majority now reinstates it along with its procedural complement, *Casale Industries.*[354] This unfortunate result is unsurprising, since the majority recently reaffirmed *Staunton Fuel* for unfair-labor-practice-case purposes.[355] Nevertheless, the Court of Appeals for the District of Columbia Circuit has rejected *Staunton Fuel,* repeatedly and emphatically.[356] I agree with the D.C. Circuit's criticisms of that decision, and I would retain this aspect of the 2020 Rule as well.

A. Background

In 1959, Congress enacted Section 8(f) of the Act to address unique characteristics of employment and bargaining practices in the construction industry. Section 8(f) permits an employer and labor organization in the construction industry to establish a collective-bargaining relationship in the absence of majority support, an exception to the majority-based requirements for establishing a collective-bargaining relationship under Section 9(a). While the impetus for this exception to majoritarian principles stemmed primarily from the fact that construction-industry employers often executed pre-hire agreements with labor organizations in order to assure a reliable, cost-certain source of labor referred from a union hiring hall for a specific job, the exception applies as well to voluntary recognition and collective-bargaining agreements executed by a construction-industry employer that has a stable cohort of employees. However, the second proviso to Section 8(f) states that any agreement that is lawful only because of that section's nonmajority exception cannot bar a petition for a Board election. Accordingly, there cannot be a contract bar or voluntary-recognition bar to an election among employees covered by an 8(f) agreement.

Board precedent has evolved with respect to the standard for determining whether a bargaining relationship and a collective-bargaining agreement in the construction industry are governed by Section 9(a) majoritarian principles or by Section 8(f) and its exception to those principles. In 1971, the Board adopted a ''conversion doctrine,'' under which a bargaining relationship initially established under Section 8(f) could convert into a 9(a) relationship by means other than a Board election or majority-based voluntary recognition. See *R.J. Smith Construction Co.,* 191 NLRB 693 (1971), enf. denied sub nom. *Operating Engineers Local 150* v. *NLRB,* 480 F.2d 1186 (D.C. Cir. 1973); *Ruttmann Construction Co.,* 191 NLRB 701 (1971). As subsequently described in *John Deklewa & Sons,* 282 NLRB 1375, 1378 (1987), enfd. sub nom. *Iron Workers Local 3* v. *NLRB,* 843 F.2d 770 (3d Cir. 1988), *R.J. Smith* and *Ruttmann* viewed a Section 8(f) agreement as '' 'a preliminary step that contemplates further action for the development of a full bargaining relationship' '' (quoting from *Ruttmann,* 191 NLRB at 702). This preliminary 8(f) relationship/agreement could convert to a 9(a) relationship/agreement, within a few days or years later, if the union could show that it had achieved majority support among bargaining-unit employees during a contract term. ''The achievement of majority support required no notice, no simultaneous union claim of majority, and no assent by the employer to complete the conversion process.'' Id. Proof of majority support sufficient to trigger conversion included ''the presence of an enforced union-security clause, actual union membership of a majority of unit employees, as well as referrals from an exclusive hiring hall.'' Id. The duration and scope of the post-conversion contract's applicability under Section 9(a) would vary, depending upon the scope of the appropriate unit (single or multiemployer) and the employer's hiring practices (project-by-project or permanent and stable workforce). Id. at 1379.

The *Deklewa* Board made fundamental changes in the law governing construction-industry bargaining relationships and set forth new principles that are relevant to the 2020 Rule. First, it repudiated the conversion doctrine as inconsistent with statutory policy and Congressional intent expressed through the second proviso to Section 8(f) ''that an 8(f) agreement may not act as a bar to, inter alia, decertification or rival union petitions.'' Id. at 1382. Contrary to this intent, the ''extraordinary'' conversion of an original 8(f) agreement into a 9(a) agreement raised ''an absolute bar to employees' efforts to reject or to change their collective-bargaining representative,'' depriving them of the ''meaningful and readily available escape hatch'' assured by the second proviso. Id. Second, the Board held that 8(f) contracts and relationships are enforceable through Section 8(a)(5) and Section 8(b)(3) of the Act, but only for as long as the contract remains in effect. Upon expiration of the contract, ''either party may repudiate the relationship.'' Id. at 1386. Further, inasmuch as Section 8(f) permits an election at any time during the contract term, ''[a] vote to reject the signatory union will void the 8(f) agreement and will terminate the 8(f) relationship. In that event, the Board will prohibit the parties from reestablishing the 8(f) relationship covering unit employees for a 1-year period.'' Id. Third, the Board presumed that collective-bargaining agreements in the construction industry are governed by Section 8(f), so that ''a party asserting the existence of a 9(a) relationship bears the burden of proving it.'' Id. at 1385 fn. 41. Finally, stating that ''nothing in this opinion is meant to suggest that unions have less favored status with respect to construction industry employers than they possess with respect to those outside the construction industry,'' the Board affirmed that a construction-industry union could achieve 9(a) status through ''voluntary recognition accorded . . . by the employer of a stable workforce where that recognition is based on a clear showing of majority support among the union employees, *e.g.,* a valid card majority.'' Id. at 1387 fn. 53.

The *Deklewa* Board's presumption of 8(f) status for construction-industry relationships did not preclude the possibility that a relationship undisputedly begun under Section 8(f) could become a 9(a) relationship upon the execution of a subsequent agreement. In cases applying *Deklewa,* however, the Board repeatedly stated the requirement, both for initial and subsequent agreements, that in order to prove a 9(a) relationship, a union would

[353] See *Enright Seeding, Inc.,* 371 NLRB No. 127, slip op. at 11 & fn. 8 (2022) (Member Ring, dissenting) (citing cases).

[354] 311 NLRB 951 (1993).

[355] *Enright Seeding,* supra.

[356] See *Nova Plumbing, Inc.* v. *NLRB,* 330 F.3d 531 (D.C. Cir. 2003); *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d 1031, 1038 (D.C. Cir. 2018).

have to show '' 'its express demand for, and an employer's voluntary grant of, recognition to the union as bargaining representative based on a contemporaneous showing of union support among a majority of employees in an appropriate unit.' '' *Brannan Sand & Gravel Co.,* 289 NLRB 977, 979–980 (1988) (quoting *American Thoro-Clean, Ltd.,* 283 NLRB 1107, 1108–1109 (1987)). Further, in *J & R Tile,* 291 NLRB 1034, 1036 (1988), the Board held that, to establish voluntary recognition, there must be ''positive evidence that a union unequivocally demanded recognition as the employees' 9(a) representative and that the employer unequivocally accepted it as such.'' *Golden West Electric,* 307 NLRB 1494, 1495 (1992) (citing *J & R Tile,* supra).[357]

However, in *Staunton Fuel & Material,* 335 NLRB at 719–720, the Board, for the first time, held that a union could prove 9(a) recognition by a construction-industry employer on the basis of contract language alone without any other ''positive evidence'' of a contemporaneous showing of majority support. Relying on two recent decisions by the United States Court of Appeals for the Tenth Circuit,[358] the Board held that language in a contract is independently sufficient to prove a 9(a) relationship ''where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, evidence of its majority support.'' Id. at 720. The Board found that this contract-based approach ''properly balances Section 9(a)'s emphasis on employee choice with Section 8(f)'s recognition of the practical realities of the construction industry.'' Id. at 719. Additionally, the Board stated that under the *Staunton Fuel* test, ''[c]onstruction unions and employers will be able to establish 9(a) bargaining relationships easily and unmistakably where they seek to do so.'' Id.

On review of a subsequent Board case applying *Staunton Fuel,* the United States Court of Appeals for the District of Columbia Circuit sharply disagreed with the Board's analysis. *Nova Plumbing, Inc.* v. *NLRB,* 330 F.3d at 531, granting review and denying enforcement of *Nova Plumbing, Inc.,* 336 NLRB 633 (2001). Relying heavily on the majoritarian principles emphasized by the Supreme Court in *Int'l Ladies' Garment Workers' Union* v. *NLRB,* 366 U.S. 731 (1961), the D.C. Circuit stated that ''[t]he proposition that contract language standing alone can establish the existence of a section 9(a) relationship runs roughshod over the principles established in *Garment Workers,* for it completely fails to account for employee rights under sections 7 and 8(f). An agreement between an employer and union is void and unenforceable, *Garment Workers* holds, if it purports to recognize a union that actually lacks majority support as the employees' exclusive representative. While section 8(f) creates a limited exception to this rule for pre-hire agreements in the construction industry, the statute explicitly preserves employee rights to petition for decertification or for a change in bargaining representative under such contracts. 29 U.S.C. 158(f). The Board's ruling that contract language alone can establish the existence of a section 9(a) relationship—and thus trigger the three-year 'contract bar' against election petitions by employees and other parties—creates an opportunity for construction companies and unions to circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions. By focusing exclusively on employer and union intent, the Board has neglected its fundamental obligation to protect employee section 7 rights, opening the door to even more egregious violations than the good faith mistake at issue in *Garment Workers*.'' 330 F.3d at 536–537.

Notwithstanding the court's criticism in *Nova Plumbing,* until the 2020 Rule the Board had adhered to *Staunton Fuel*'s holding that certain contract language, standing alone, can establish a 9(a) relationship in the construction industry. Indeed, as noted above, the current majority has recently reaffirmed that holding. See *Enright Seeding, Inc.,* 371 NLRB No. 127 (2022).[359]

The D.C. Circuit, for its part, has adhered to the contrary view. In *Colorado Fire Sprinkler, Inc.* v. *NLRB,* 891 F.3d 1031 (2018), the court granted review and vacated a Board order premised on the finding that a bargaining relationship founded under Section 8(f) became a 9(a) relationship solely because of recognition language in a successor bargaining agreement executed by the parties. The court reemphasized its position in *Nova Plumbing* that the *Staunton Fuel* test could not be squared either with *Garment Workers'* majoritarian principles or with the employee free choice principles represented by Section 8(f)'s second proviso. It also focused more sharply on the centrality of employee free choice in determining when a Section 9(a) relationship has been established. The court observed that ''[t]he *raison d'être* of the National Labor Relations Act's protections for union representation is to vindicate the *employees'* right to engage in collective activity and to empower *employees* to freely choose their own labor representatives.'' Id. at 1038. Further, the court emphasized that ''[t]he unusual Section 8(f) exception is meant not to cede all employee choice to the employer or union, but to provide employees in the inconstant and fluid construction and building industries some opportunity for collective representation . . . . [I]t is not meant to force the employees' choices any further than the statutory scheme allows.'' Id. at 1039. Accordingly, ''[b]ecause the statutory objective is to ensure that only unions chosen by a majority of employees enjoy Section 9(a)'s enhanced protections, the Board must faithfully police the presumption of Section 8(f) status and the strict burden of proof to overcome it. Specifically, the Board must demand clear evidence that the employees—not the union and not the employer—have independently chosen to transition away from a Section 8(f) pre-hire arrangement by affirmatively choosing a union as their Section 9(a) representative.'' Id. Pursuant to that strict evidentiary standard, the court found that it would not do for the Board to rely under *Staunton Fuel* solely on contract language indicating that '' 'the employer's recognition was based on the union's having shown, or having offered to show, an evidentiary basis of its

[357] In an Advice Memorandum issued after *J & R Tile,* the Board's General Counsel noted record evidence that the employer in that case ''clearly knew that a majority of his employees belonged to the union, since he had previously been an employee and a member of the union. However, the Board found that in the absence of positive evidence indicating that the union sought, and the employer thereafter granted, recognition as the 9(a) representative, the employer's knowledge of the union's majority status was insufficient to take the relationship out of Section 8(f).'' *In re Frank W. Schaefer, Inc.,* Case 9–CA–25539, 1989 WL 241614.

[358] *NLRB* v. *Triple C Maintenance, Inc.,* 219 F.3d 1147 (10th Cir. 2000); *NLRB* v. *Oklahoma Installation Co.,* 219 F.3d 1160 (10th Cir. 2000).

[359] Then-Member Ring relevantly dissented, explaining that *Staunton Fuel* was wrongly decided and should be overruled for the reasons stated in the 2020 Rule and here. *Enright Seeding, Inc.,* 371 NLRB No. 127, slip op. at 8–14. As Member Ring observed, the Board should, at the least, commit to resolving its long-running and irreconcilable disagreement with the D.C. Circuit by seeking Supreme Court review when that court inevitably denies enforcement of the decision in that case.

majority support.' '' Id. at 1040 (quoting *Staunton Fuel,* 335 NLRB at 717). Such reliance ''would reduce the requirement of affirmative employee support to a word game controlled entirely by the union and employer. Which is precisely what the law forbids.'' Id.

B. The 2020 Rule's Modified Requirements for Proof of Section 9(a) Bargaining Relationships in the Construction Industry

The 2020 Rule requires positive evidence that the union unequivocally demanded recognition as the 9(a) majority-supported exclusive bargaining representative of employees in an appropriate bargaining unit, and that the employer unequivocally accepted it as such, based on a contemporaneous showing of support from a majority of employees in an appropriate unit. The Rule also clarifies that collective-bargaining agreement language, standing alone, will not be sufficient to provide the required showing that a majority of unit employees covered by a presumptive 8(f) bargaining relationship have freely chosen the union to be their 9(a) representative. These modifications apply only to voluntary recognition extended on or after the effective date of the 2020 Rule and to any collective-bargaining agreement entered into on or after the date of voluntary recognition extended on or after the effective date of the Rule. Finally, in adopting these modifications, the 2020 Rule overruled *Casale Industries*[360] in relevant part, ''declin[ing] to adopt a Section 10(b) 6-month limitation on challenging a construction-industry union's majority status by filing a petition for a Board election.'' 85 FR at 18370, 18390–18391, 18400.

C. Critique of the Majority's Rescission of Section 103.22

The majority fully rescinds Section 103.22 of the Board's Rules and Regulations, which encompasses all the 2020 Rule's modified requirements for proving a Section 9(a) bargaining relationship in the construction industry. The result is the effective reinstatement of the ill-conceived Board precedents of *Staunton Fuel* and *Casale Industries* for purposes of applying the voluntary-recognition and contract bars in the construction industry. My colleagues' reasons for doing so, discussed below, lack merit and do not warrant revisiting the sound policy of the 2020 Rule.

In the 2022 notice of proposed rulemaking, the majority principally complained that the 2020 Rule's overruling of *Casale Industries* ''[i]n the absence of prior public comments . . . may create an onerous and unreasonable recordkeeping requirement on construction employers and unions . . . to retain and preserve—indefinitely—extrinsic evidence of a union's showing of majority support at the time when recognition was initially granted.'' 87 FR at 66912. In their final rule, my colleagues reiterate their claim that the overruling of *Casale* was effectuated ''without having provided advance notice to the public'' such that ''interested parties had no reason to know to provide comments on the possibility of *Casale* being overruled.'' First of all, my colleagues are mistaken when they claim that the decision to overrule *Casale Industries* in relevant part was undertaken ''in the absence of prior public comments'' and that ''interested parties had no reason to know to provide comments'' on this issue. In fact, this issue was squarely raised in public comments requesting that the Board ''incorporate [in the final rule] a Section 10(b) 6-month limitation for challenging a construction-industry union's majority status.'' 85 FR at 18390–18391. The Board thoroughly considered the commenters' request and responded with a detailed and persuasive explanation of why it declined to incorporate such a limitations period in the 2020 Rule. Id. at 18391. In the 2020 Rule, the Board explained its reasoning by noting that Section 10(b) applies only to unfair labor practices, whereas the 2020 Rule ''addresses only representation proceedings—*i.e.,* whether an election petition is barred because a construction-industry employer and union formed a 9(a) rather than an 8(f) collective-bargaining relationship.'' Id. ''[O]nly if the parties formed a 9(a) relationship could there be an unfair labor practice that would trigger Section 10(b)'s 6-month limitation.'' Id.[361] Accordingly, as the 2020 Rule explained, *Casale Industries* erroneously ''begs the question by assuming the very 9(a) status that ought to be the object of inquiry.'' Id. The Board also appropriately concluded in the 2020 Rule that such a limitations period in this context ''improperly discounts the importance of protecting employee free choice.'' Id.[362] Further, the District of Columbia and Fourth Circuits have expressed doubts regarding the limitations period adopted in *Casale Industries.* See *Nova Plumbing,* 330 F.3d at 539; *American Automatic Sprinkler Systems* v. *NLRB,* 163 F.3d 209, 218 fn. 6 (4th Cir. 1998).

[360] 311 NLRB at 953 (holding that the Board would ''not entertain a claim that majority status was lacking at the time of recognition'' where ''a construction[-]industry employer extends 9(a) recognition to a union, and 6 months elapse without a charge or petition'').

[361] See also *Brannan Sand & Gravel Co.,* 289 NLRB at 982 (predating *Casale Industries,* and holding that nothing ''precludes inquiry into the establishment of construction[-]industry bargaining relationships outside the 10(b) period'' because ''[g]oing back to the beginning of the parties' relationship . . . simply seeks to determine the majority or nonmajority[-]based nature of the current relationship and does not involve a determination that any conduct was unlawful'').

[362] The majority claims that where an employer and union have ''falsely made [an] assertion [of the union's majority status], an employer's grant of 9(a) recognition and a union's acceptance of that recognition are both unlawful,'' and ''the most appropriate forum for challenging any claims of collusion is . . . an unfair labor practice proceeding alleging violations of Secs. 8(a)(2) and (1) and 8(b)(1)(A).'' In this connection, the majority denies that Sec. 103.22 is a ''reasonable safeguard'' against collusion. My colleagues miss the mark. Sec. 103.22 does not attempt to remedy unfair labor practices with a representation petition and Board-supervised election. The 2020 Rule applies to the determination of whether to process a petition in the representation context, not to the hypothetical adjudication of unalleged unfair labor practices. Crucially, the 2020 Rule protects employee free choice to seek a Board election upon a proper showing of interest where no lawful Sec. 9(a) relationship has been formed. Any attendant unfair labor practices—which would typically go undiscovered under the majority's approach given that my colleagues would simply take the parties' word for it that they had established a valid 9(a) relationship—are subject to appropriate unfair labor practice proceedings and remedies under current law. Meanwhile, the majority's reinstatement of *Staunton Fuel* extends an open invitation to construction-industry employers and unions to form 9(a) bargaining relationships without regard to the will of the majority of the employer's employees, with the predictable result that the parties to those relationships will routinely be in violation of Sec. 8(a)(2) and 8(b)(1)(A)—and, if their contract includes union security, of Section 8(a)(3) and 8(b)(2) as well. See *Dairyland USA Corp.,* 347 NLRB 310, 312–313 (2006).

Moreover, I share the 2020 Rule's concern that ''employees and rival unions will likely presume that a construction-industry employer and union entered an 8(f) collective-bargaining agreement'' with a term longer than six months, meaning that it is ''highly unlikely that they will file a petition challenging the union's status within 6 months of recognition.'' See 85 FR at 18391. In the 2022 notice of proposed rulemaking, my colleagues contended that ''[e]mployees and rival unions who wish to challenge an incumbent union during the duration of a contract must know whether the construction employer has recognized the union as the 9(a) representative'' based on ''the unambiguous 9(a) recognition language in the parties' agreement'' despite the clear legal presumption in favor of an 8(f) bargaining relationship. 87 FR at 66914. But it is plainly unreasonable to infer that employees and rival unions would effectively presume the opposite of the legal default relationship in the construction industry, and, given the known risk of collusion in the formation of 9(a) bargaining relationships in that industry, the burden of having to act on such an unreasonable assumption should not be placed on them. See *Nova Plumbing,* 330 F.3d at 537 (observing that ''construction companies and unions [could] circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions'').

Finally, regarding the supposedly ''onerous . . . recordkeeping requirement,'' the Board reasonably concluded, and I agree, that although the 2020 Rule ''will incentivize unions to keep a record of majority-employee union support[,] . . . such a minor administrative inconvenience [is not] a sufficient reason to permit employers and unions to circumvent employees' rights.'' 85 FR at 18392.[363]

Significantly, there is little indication that the majority has engaged in reasoned decision-making by seriously considering alternatives to rescinding Section 103.22 ''in toto.'' Indeed, my colleagues acknowledge that the General Counsel proposed restoring *Staunton Fuel,* but limiting its application to employer RM petitions while excepting decertification RD petitions from bargaining unit employees and RC petitions from rival unions.[364] Under this proposal, a modified *Staunton Fuel* rule would bar a construction employer from challenging its own initial grant of 9(a) recognition to a union, but would not bar timely election petitions filed by unit employees or rival unions, as applicable. The General Counsel further proposed restoring the 6-month limitations period under *Casale* with the modification that it would not begin to run until at least one statutory employee is hired or otherwise has constructive notice that the employer granted 9(a) recognition to a union without majority support.[365] Although my view is that Section 103.22 should be retained without modification, I am struck by my colleagues' lack of meaningful engagement with the General Counsel's proposals, each of which is considerably less extreme than the majority's reflexive return to the pre-Section 103.22 status quo ''in toto.'' The majority does little more than dismiss these and other alternatives as ''unwarranted'' while citing the generally applicable principle that unions do not ''have less favored status with respect to construction industry employers than they possess with respect to those outside the construction industry.'' (quoting *Deklewa,* 282 NLRB at 1387 fn. 53).

At bottom, the legal presumption of 8(f) status in the construction industry follows from the protections afforded under the second proviso to Section 8(f), which provides that an extant 8(f) agreement ''shall not be a bar to a petition'' for an election under either Section 9(c) or 9(e) of the Act. However, once the 8(f) presumption is rebutted and a 9(a) relationship is recognized, the voluntary recognition bar and/or the contract bar may operate to bar election petitions in appropriate circumstances. In other words, a valid 9(a) recognition causes employees to forfeit their rights to invoke the Board's power to resolve a question of representation during the bar period. Just as a party—or a federal court acting sua sponte—may at any time during litigation challenge the court's subject-matter jurisdiction inasmuch as such jurisdiction implicates the court's power to hear the claim (Fed. R. Civ. Pro. 12(h)(3)), we conclude that a party should be free to file an election petition challenging a construction-industry employer's claimed 9(a) recognition of an incumbent union—and thereby demand contemporaneous positive evidence of majority support—inasmuch as a default 8(f) relationship potentially masquerading as a lawful 9(a) relationship implicates the Board's power to resolve a valid question of representation.

Conclusion

As noted at the outset, my colleagues have chosen to title this rulemaking ''Fair Choice Employee Voice.'' You have to admire their chutzpah. As elucidated at length above, the Rule they are promulgating does not in any way serve to protect employee free choice (*i.e.,* ''employee voice'') and in fact elevates union-driven ''fair choice'' interests over the statutory rights of employees. Unions, not employees, are protected when the General Counsel indefinitely blocks decertification petitions filed by employees seeking an election to determine whether a union is still supported by a majority of unit employees.[366] Unions, not employees, are protected by removing any chance for employees, who will never have had the chance to vote on whether to be represented by a union, to challenge voluntary recognition agreements.[367] And unions, not employees, are protected when they are given more latitude to enter into 9(a) relationships without providing employees adequate opportunity to challenge that change to their representation status. The 2020 Rule put provisions in place to protect employees' choice of representative and their ability to ''voice'' that choice

[363] The majority claims that such a need for recordkeeping in the absence of a limitations period ''destabilize[s] collective-bargaining relationships'' and ''detrimentally affects labor relations stability and employee free choice'' by permitting employers to ''at any time'' challenge voluntary recognitions for which there may be no available supporting evidence of majority status contemporaneous with the Sec. 9(a) recognition. But the language of the 2020 Rule itself makes clear that its evidentiary requirements for majority-based recognition in the construction industry apply only prospectively. Accordingly, parties forming bargaining relationships after the effective date of the 2020 Rule will have been on notice of the need to retain the relevant records. Meanwhile, the majority observes that, under *Staunton Fuel,* ''contract language alone'' does not ''create[ ] a 9(a) relationship,'' but ''simply serves as a contemporaneous memorialization of 9(a) recognition,'' and that commenters opposed to their final rule ''failed to appreciate the distinction between'' the two concepts. My colleagues' observation is little more than a red herring. The issue is, and has always been, whether contractual language alone is sufficient to prove the existence of a 9(a) relationship, not whether the contract creates the 9(a) relationship.

Further, I reject my colleagues' suggestion that the absence of a limitations period and any resulting recordkeeping so burdens parties in the construction industry as to be inconsistent with the *Deklewa* Board's assurance that construction-industry parties do not enjoy a ''less favored status'' relative to non–construction-industry parties. See *Deklewa,* 282 NLRB at 1387 fn. 53. They go so far as to claim that Sec. 103.22 ''established a hard and fast rule to treat unions representing construction employees differently,'' and ''deprive[d] unions representing construction employees from utilizing the same procedure under Sec[.] 9(a) to obtain voluntary recognition—and its attendant benefits—that is available to all other unions.'' The majority's rhetoric does not match the reality. Indeed, the 2020 Rule does not treat construction-industry parties differently: voluntary recognitions both outside and within the construction industry must be based on a showing of majority support. But even if it did, evidence supporting this showing is particularly crucial where a party claims that an 8(f) relationship has become a 9(a) relationship. See *Colorado Fire Sprinkler,* 891 F.3d at 1039 (observing that ''[b]ecause the statutory objective is to ensure that only unions chosen by a majority of employees enjoy Sec[.] 9(a)'s enhanced protections, the Board must faithfully police the presumption of Sec[.] 8(f) status and the strict burden of proof to overcome it'').

I also find it ironic that my colleagues extol the benefits of applying the Board's contract bar rules to contract language purporting to memorialize a 9(a) bargaining relationship, namely the benefit of precluding ''an employer from evading its bargaining obligations under the Act by falsely asserting that no 9(a) recognition had ever been granted.'' They maintain this posture notwithstanding (1) their return to the ''historical'' blocking charge policy, the gamesmanship of which by unions is well-known and has been acknowledged by the Board, and (2) the D.C. Circuit's concern that ''construction companies and unions [could] circumvent both section 8(f) protections and *Garment Workers'* holding by colluding at the expense of employees and rival unions.'' See *Nova Plumbing,* 330 F.3d at 537.

[364] Comment of General Counsel Abruzzo.

[365] Id.

[366] According to my colleagues, the 2020 Rule represented ''a narrow view as to what constitutes employee 'free choice,'' even as their conception of ''employee voice'' leaves out the employee free choice interests of decertification petitioners entirely.

[367] The majority claims that by ''focusing on 'fair choice' and 'employee voice,' [they] aim to place the emphasis where it belongs: on employees' fundamental Section 7 rights,'' including by resolving any ''question of representation . . . by conducting 'an election by secret ballot.' '' (quoting 29 U.S.C. 159(c)). Yet my colleagues go out of their way to deprive employees on whom a voluntary recognition agreement is imposed of the right to pursue ''an election by secret ballot.'' They effectively do the same to construction employees who would challenge the Sec. 9(a) representative status of a union who began representing them pursuant to Sec. 8(f).

through the established, preferred method of Board-conducted secret-ballot elections. The removal of these protections is directly at odds with the Board's mandate under the NLRA.

Compounding the harm to employees and the Board's other stakeholders is the unnecessary and counterproductive policy oscillation represented in the 2024 Rule and other recent agency actions, such as the majority's two recent final rules rescinding and replacing separate, well-reasoned administrative rules defining joint employer status under the Act [368] and revising the Board's representation procedures.[369] Indeed, as noted at the outset, the 2024 Rule is simply the product of a new Board majority's disagreement with the 2020 Rule rather than any changed circumstances that might justify such a stark policy reversal. My colleagues cannot, nor do they, present any evidence that the 2020 Rule has infringed on employees' rights, nor can they present evidence that the 2020 Rule has failed to protect employees' rights as intended.

Just because my colleagues have the power to make the changes promulgated in this rule does not establish that they have a reasonable basis for doing so under the NLRA. Because I do not believe that they do, as well as for the reasons I have discussed above, I respectfully dissent.

VIII. Regulatory Procedures

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, requires an agency promulgating a final rule to prepare a Final Regulatory Flexibility Analysis (FRFA) when the regulation will have a significant economic impact on a substantial number of small entities. An agency is not required to prepare a FRFA if the Agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Although the Board believed that this rule would not have a significant economic impact on a substantial number of small entities, the Board issued an Initial Regulatory Flexibility Analysis (IRFA) with its proposed rule to provide the public the fullest opportunity to offer feedback. See 87 FR 66929. The Board solicited comments from the public that would shed light on potential compliance costs that may result from the rule that the Board had not identified or anticipated.

The RFA does not define either ''significant economic impact'' or ''substantial number of small entities.'' [370] Additionally, ''[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulations.'' [371] After reviewing the comments, the Board continues to believe that the only direct cost of compliance with the rule is reviewing and understanding the rule. Given that low cost, detailed below, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

1. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply

To evaluate the impact of the final rule, the Board first identified the universe of small entities that could be impacted by reinstating the blocking charge policy, the voluntary recognition bar doctrine, and the use of contract language to serve as sufficient evidence of voluntary recognition under Section 9(a) in representation cases in the building and construction industry.

a. Blocking Charge and Voluntary Recognition Bar Changes

The changes to the blocking charge policy and voluntary recognition bar doctrine will apply to all entities covered by the National Labor Relations Act (''NLRA'' or ''the Act''). According to the United States Census Bureau, there were 6,294,604 business firms with employees in 2021.[372] Of those, the Census Bureau estimates that about 6,274,916 were firms with fewer than 500 employees.[373] While this final rule does not apply to employers that do not meet the Board's jurisdictional requirements, the Board does not have the data to determine the number of excluded entities.[374] Accordingly, the Board assumes for purposes of this analysis that all 6,274,916 small business firms could be impacted by the final rule.

The changes to the blocking charge policy and voluntary recognition bar doctrine will also impact labor unions as organizations representing or seeking to represent employees. Labor unions, as defined by the NLRA, are entities ''in which employees participate and which exist for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.'' [375] The SBA's small business standard for ''Labor Unions and Similar Labor Organizations'' (NAICS #813930) is $8 million in annual receipts.[376] In

[368] *Standard for Determining Joint Employer Status,* 88 FR 73946 (2023).

[369] *Representation-Case Procedures,* 88 FR 58076 (2023).

[370] 5 U.S.C. 601.

[371] U.S. Small Business Administration (SBA) Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (SBA Guide) 18 (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf.*

[372] U.S. Department of Commerce, Bureau of Census, 2021 Statistics of U.S. Businesses (''SUSB'') Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, *https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html* (from downloaded Excel Table entitled ''U.S. & States, 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2021/us_state_6digitnaics_2021.xlsx*). ''Establishments'' refer to single location entities—an individual ''firm'' can have one or more establishments in its network. The Board has used firm level data. Census Bureau definitions of ''establishment'' and ''firm'' can be found at *https://www.census.gov/programs-surveys/susb/about/glossary.html.*

[373] The Census Bureau does not specifically define ''small business'' but does break down its data into firms with 500 or more employees and those with fewer than 500 employees. *See* U.S. Department of Commerce, Bureau of Census, 2021 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, *https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html* (from downloaded Excel Table entitled ''U.S. & States, 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2021/us_state_6digitnaics_2021.xlsx.* Consequently, the 500-employee threshold is commonly used to describe the universe of small employers. For defining small businesses among specific industries, the standards are defined by the North American Industry Classification System (NAICS).

[374] Pursuant to 29 U.S.C. 152(6) and (7), the Board has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level. *NLRB* v. *Fainblatt,* 306 U.S. 601, 606–07 (1939). To this end, the Board has adopted monetary standards for the assertion of jurisdiction that are based on the volume and character of the business of the employer. In general, the Board asserts jurisdiction over employers in the retail business industry if they have a gross annual volume of business of $500,000 or more. *Carolina Supplies & Cement Co.,* 122 NLRB 88 (1959). But shopping center and office building retailers have a lower threshold of $100,000 per year. *Carol Management Corp.,* 133 NLRB 1126 (1961). The Board asserts jurisdiction over non-retailers generally where the value of goods and services purchased from entities in other states is at least $50,000. *Siemons Mailing Service,* 122 NLRB 81 (1959).

The following employers are excluded from the NLRB's jurisdiction by statute: (1) Federal, state and local governments, including public schools, libraries, and parks, Federal Reserve banks, and wholly-owned government corporations. 29 U.S.C. 152(2); (2) Employers that employ only agricultural laborers, those engaged in farming operations that cultivate or harvest agricultural commodities, or prepare commodities for delivery. 29 U.S.C. 153(3); and (3) Employers subject to the Railway Labor Act, such as interstate railroads and airlines. 29 U.S.C. 152(2).

[375] 29 U.S.C. 152(5).

[376] 13 CFR 121.201.

2017, there were 13,137 labor unions in the U.S.[377] Of these, 12,771 (97.21% of the total) are definitely small businesses according to SBA standards because their receipts are below $7,499,999.[378] And, 104 additional unions have annual receipts between $7,499,999 and $9,999,999.[379] Since the Board cannot determine how many of those 104 labor union firms fall below the $8 million annual receipt threshold, it will assume that all 104 are small businesses as defined by the SBA.[380] Therefore, for the purposes of this IRFA, the Board assumes that 12,875 labor unions (97.73% of total) are small businesses that could be impacted by the final rule.

The number of small entities likely to be directly impacted by the final rule, however, is much lower. First, the blocking charge policy will only be applied as a matter of law under certain circumstances in a Board proceeding—namely when a party to a representation proceeding files an unfair labor practice charge alleging conduct that could result in setting aside the election or dismissing the petition. This occurs only in a small percentage of the Board's cases. For example, between July 31, 2018, and July 30, 2020, the last two-year period during which the original blocking charge policy was in effect, there were 162 requests that an unfair labor practice charge block an election (*i.e.* an average of 81 per year). Assuming each request involved a distinct employer and labor organization, the Board's blocking charge policy affected an average of 162 entities per year, which is only .0026% of the 6,274,916 small entities that could be subject to the Board's jurisdiction.[381]

Similarly, the number of small entities likely to be directly impacted by the voluntary recognition bar doctrine is also very low. Since the modified voluntary recognition bar became effective on July 31, 2020, the Board has tracked the number of requests for notices used to inform employees that a voluntary recognition had taken place and of their right to file a petition for an election. During the first two years, the Board has received an average of 130 requests per year for those notices. Assuming each request was made by a distinct employer and involved at least one distinct labor union, only 260 entities of any size were affected. Even assuming all 260 of those entities met the SBA's definition of small business, they would account for only .0041% of the 6,274,916 small entities that could be subject to the Board's jurisdiction.

Throughout the IRFA, the Board requested comments or data that might improve its analysis, 87 FR 66915, 66932, but no additional data was received regarding the number of small entities and unions to which this change will apply.

b. Restoration of the Use of Contract Language To Serve as Sufficient Evidence of 9(a) Recognition in Representation Cases in the Construction Industry

The Board believes that restoring the use of contract language to serve as sufficient evidence of majority-supported voluntary recognition under Section 9(a) in representation cases in the building and construction industry is only relevant to employers engaged primarily in the building and construction industry and labor unions of which building and construction employees are members. The need to differentiate between voluntary recognition under Section 8(f) of the Act versus Section 9(a) is unique to entities engaged in or representing members of the building and construction industry because Section 8(f) applies solely to those entities. Of the 764,546 building and construction-industry employers classified under the NAICS Section 23 Construction,[382] approximately 692,911 meet the SBA ''small business'' standard for classifications in the NAICS Construction sector.[383] The Department of Labor's Office of Labor-Management Standards (OLMS) provides a searchable database of union annual financial reports.[384] However, OLMS does not identify unions by industry, *e.g.,* construction. Accordingly, the Board does not have the means to determine a precise number of unions of which building and construction employees are members. In its 2019 and 2022

[377] The Census Bureau only provides data about receipts in years ending in 2 or 7. The 2022 data has not yet been published, so the 2017 data is the most recent available information regarding receipts. See U.S. Department of Commerce, Bureau of Census, 2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipts Size, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html* (from downloaded Excel Table entitled ''U.S., 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx* (Classification #813930—Labor Unions and Similar Labor Organizations).

[378] Id.

[379] See id.

[380] The Board could not determine a definitive number of labor union firms that are small businesses because the small business thresholds for the relevant NAICS code is not wholly compatible with the manner in which the Census Bureau reports the annual receipts of firms. The small business threshold is $8 million in annual receipts for NAICS code 813930 (Labor Unions and Similar Labor Organizations), but the Census Bureau groups together all firms with annual receipts between $5 million and $7,499,999 and those with annual receipts between $7.5 million and $9,999,999. See 13 CFR 121.201; U.S. Department of Commerce, Bureau of Census, 2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipts Size, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html* (from downloaded Excel Table entitled ''U.S., 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx*).

[381] In the first two years of the current blocking charge policy, of the 3,867 petitions filed, there were 66 requests that unfair labor practice charges block an election, which means only 132 entities of the 6,274,916 small entities (.0021%) that could be subject to the Board's jurisdiction were affected by the policy.

[382] 13 CFR 121.201. These NAICS building and construction-industry classifications include the following codes, 236115: New Single-Family Housing Construction; 236116: New Multifamily Housing Construction; 236117: New Housing For-Sale Builders; 236118: Residential Remodelers; 236210: Industrial Building Construction; 236220: Commercial and Institutional Building Construction; 237110: Water and Sewer Line and Related Structures Construction; 237120: Oil and Gas Pipeline and Related Structures Construction; 237130: Power and Communication Line and Related Structures Construction; 237210: Land Subdivision; 237310: Highway, Street, and Bridge Construction; 237990: Other Heavy and Civil Engineering Construction; 238110: Poured Concrete Foundation and Structure Contractors; 238120: Structural Steel and Precast Concrete Contractors; 238130: Framing Contractors; 238140: Masonry Contractors; 238150: Glass and Glazing Contractors; 238160: Roofing Contractors; 238170: Siding Contractors; 238190: Other Foundation, Structure, and Building Exterior Contractors; 238210: Electrical Contractors and Other Wiring Installation Contractors; 238220: Plumbing, Heating, and Air-Conditioning Contractors; 238290: Other Building Equipment Contractors; 238310: Drywall and Insulation Contractors; 238320: Painting and Wall Covering Contractors; 238330: Flooring Contractors; 238340: Tile and Terrazzo Contractors; 238350: Finish Carpentry Contractors; 238390: Other Building Finishing Contractors; 238910: Site Preparation Contractors; 238990: All Other Specialty Trade Contractors. *See* U.S. Department of Commerce, Bureau of Census, 2021 SUSB Annual Data Tables by Establishment Industry, *https://www2.census.gov/programs-surveys/susb/tables/2021/us_state_6digitnaics_2021.xlsx.*

[383] The Board could not determine a definitive number of building and construction-industry firms that are small businesses because the small business thresholds for the relevant NAICS codes are not wholly compatible with the manner in which the Census Bureau reports the annual receipts of firms. For example, the small business threshold is $19 million in annual receipts for NAICS codes 238110–238220, but the Census Bureau groups together all firms with annual receipts between $15 million and $19,999,999. And, for NAICS codes 236115–237130 and 237310–237990, the small business threshold is $45 million in annual receipts, but the Census Bureau groups together firms with annual receipts between $40 million and $49,999,999. *See* 13 CFR 121.201; U.S. Department of Commerce, Bureau of Census, 2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipts Size, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html* (from downloaded Excel Table entitled ''U.S., 6-digit NAICS'' found at *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx.*

[384] U.S. Department of Labor, Office of Labor-Management Standards, Online Public Disclosure Room, Download Yearly Data, Union Reports, Yearly Data Download, available at *https://olmsapps.dol.gov/olpdr/.*

IFRAs, the Board identified 3,929 labor unions primarily operating in the building and construction industry that met the SBA ''small business'' standard.[385] Although unions that do not primarily operate in the building and construction industry could still be subject to the final rule if they seek to represent employees engaged in the building and construction industry, comments received in response to the 2019 and 2022 IRFAs did not reveal that the Board failed to consider any additional small labor unions, including those representing employees engaged in the building and construction industry, or any other categories of small entities that would likely take special interest in a change in the standard for using contract language to serve as sufficient evidence of majority-supported voluntary recognition in the building and construction industry.[386] Therefore, at this time, the Board assumes that this portion of the final rule could only affect 696,840 of the 6,274,916 small entities that could be subject to the Board's jurisdiction.

The Board is also unable to determine how many of those 692,911 small building and construction-industry employers elect to enter voluntarily into a 9(a) bargaining relationship with a labor union and use language in a collective-bargaining agreement to serve as evidence of the labor union's 9(a) status. However, to the extent it is an indicator of the number of building and construction-industry employers that enter into a 9(a) bargaining relationship with a small labor union, the number of cases that involve a question of whether a relationship is governed by Section 8(f) or 9(a) is very small relative to the total number of building and construction industry employers and unions. As the Board noted in its 2019 and 2022 IRFAs, between October 1, 2015, and September 30, 2017, only two cases required the Board to determine whether a collective-bargaining agreement was governed by 8(f) or 9(a).[387] Between October 1, 2017, and November 2022, the issue only came before the Board once.[388]

2. Estimate of Economic Impacts on Small Entities

The RFA requires an agency to determine the amount of ''reporting, recordkeeping and other compliance requirements'' imposed on small entities.[389] The Court of Appeals for the District of Columbia Circuit has explained that this provision requires an agency to consider direct burdens that compliance with a new regulation will likely impose on small entities.[390]

We conclude that the final rule imposes no capital costs for equipment needed to meet the regulatory requirements; no direct costs of modifying existing processes and procedures to comply with the final rule; no lost sales and profits directly resulting from the final rule; no changes in market competition as a direct result of the final rule and its impact on small entities or specific submarkets of small entities; no extra costs associated with the payment of taxes or fees associated with the final rule; and no direct costs of hiring employees dedicated to compliance with regulatory requirements.[391] The Board did not receive any comments that identified any direct costs on small entities. Moreover, the final rule may help small entities conserve resources that they might otherwise expend by participating in an election under the current rules that would be blocked under the final rule or by engaging in a representation case proceeding that would have otherwise been barred by a voluntary recognition. And, the final rule rescinds the information collection, recordkeeping, and reporting requirements that the 2020 Rule imposed on small entities. Accordingly, the Board asserts that the only direct cost to small entities will be reviewing the rule.

To become generally familiar with the final reversions to the traditional blocking charge policy and voluntary recognition bar doctrine, we estimate that a human resources or labor relations specialist at a small employer or union may take at most ninety minutes to read the text of the rule and the supplementary information published in the **Federal Register** and potentially to consult with an attorney.[392] We estimate that an attorney would spend one hour consulting on the changes.[393] Using the Bureau of Labor Statistics' estimated wage and benefit costs, we have assessed these costs to be between $195.57 and $214.31.[394]

For the limited number of small construction employers and unions representing employees in the construction industry that will endeavor to become generally familiar with all three changes to the rule—including the portion of the rule that restores the use of contract language to serve as sufficient evidence of majority-supported voluntary recognition under Section 9(a) in representation cases in the construction industry—we estimate that a human resources or labor relations specialist may take at most two hours to read all three changes and the supplementary information published in the **Federal Register** and potentially to consult with an attorney. We estimate that an attorney would spend one hour consulting on the changes.[395] Thus, the

[385] 84 FR 39955 & fn. 136; 87 FR 66930 & fn. 223. The small business threshold for labor unions has since increased to include entities with annual receipts of less than $16.5 million. 13 CFR 121.201.

[386] The Board has identified the following unions as primarily operating in the building and construction industry: The International Union of Bricklayers and Allied Craftworkers; Building and Construction Trades Department; International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers; Operative Plasterers' and Cement Masons' International Association; Laborers' International Union; The United Brotherhood of Carpenters and Joiners of America; International Union of Operating Engineers; International Union of Journeymen and Allied Trades; International Association of Sheet Metal, Air, Rail, and Transportation Workers; International Union of Painters and Allied Trades; International Brotherhood of Electrical Workers; United Association of Journeymen Plumbers; United Union of Roofers, Waterproofers and Allied Workers; United Building Trades; International Association of Heat and Frost Insulators and Allied Workers; and International Association of Tool Craftsmen. See U.S. Department of Labor, Office of Labor-Management Standards, Online Public Disclosure Room, Download Yearly Data for 2012, *https://olms.dol-esa.gov/olpdr/GetYearlyFileServlet?report=8H58.*

[387] 84 FR 39955; 87 FR 66931.

[388] *Enright Seeding, Inc.,* 371 NLRB No. 127 (2022).

[389] See 5 U.S.C. 603(b)(4), 604(a)(4).

[390] See *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (''[I]t is clear that Congress envisioned that the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities.'').

[391] See SBA Guide at 37.

[392] Data from the Bureau of Labor Statistics indicates that employers are more likely to have a human resources specialist (BLS #13–1071) than to have a labor relations specialist (BLS #13–1075). Compare Occupational Employment and Wages, May 2023, 13–1075 Labor Relations Specialists, found at *https://www.bls.gov/oes/current/oes131075.htm,* with Occupational Employment and Wages, May 2023, 13–1071 Human Resources Specialists, found at *https://www.bls.gov/oes/current/oes131071.htm.*

[393] The Board based its estimates of how much time it will take to review the final rule and consult with an attorney on the fact that the final rule returns to the pre-2020 rule standard, which most employers, human resources and labor relations specialists, and labor relations attorneys are already knowledgeable about if relevant to their business.

[394] For wage figures, see May 2023 National Occupancy Employment and Wage Estimates, found at *https://www.bls.gov/oes/current/oes_nat.htm.* The Board has been administratively informed that BLS estimates that fringe benefits are approximately equal to 40 percent of hourly wages. Thus, to calculate total average hourly earnings, BLS multiplies average hourly wages by 1.4. In May 2023, average hourly wages for labor relations specialists were $45.49 and for human resources specialists were $36.57. The same figure for a lawyer (BLS #23–1011) is $84.84. Accordingly, the Board multiplied each of those wage figures by 1.4 and added them to arrive at its estimate.

[395] The Board estimates that a labor relations attorney would require one hour to consult with a

Continued

Board has assessed labor costs for small employers and unions representing employees in the construction industry to be between $221.17 and $246.15.[396]

The Board does not find the costs of reviewing and understanding the rule to be significant within the meaning of the RFA. In making this finding, one important indicator is the cost of compliance in relation to the revenue of the entity or the percentage of profits affected.[397] Other criteria to be considered are: whether the rule will cause long-term insolvency (*i.e.,* regulatory costs that may reduce the ability of the firm to make future capital investment, thereby severely harming its competitive ability, particularly against larger firms); and whether the cost of the final regulation will eliminate more than 10 percent of the businesses' profits, exceed one percent of the gross revenues of the entities in a particular sector, or exceed five percent of the labor costs of the entities in the sector.[398] The minimal cost to read and understand the rule will not generate any such significant economic impacts.

Because the direct compliance costs do not exceed $246.15 for any one entity, the Board has no reason to believe that the cost of compliance is significant when compared to the revenue or profits of any entity. The Board received no comments from the public to the contrary. Moreover, the Board did not receive any comments regarding its calculations or asserting any additional direct costs of compliance on small entities not identified by the Board.

B. The Paperwork Reduction Act

In the NPRM, the Board explained that the proposed rule would not impose any information-collection requirements and accordingly, the proposed rule is not subject to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* See 87 FR 66932. We have not received any substantive comments relevant to the Board's analysis of its obligations under the PRA.

C. Congressional Review Act

The provisions of this rule are substantive. Therefore, the Board will submit this rule and required accompanying information to the Senate, the House of Representatives, and the Comptroller General as required by the Small Business Regulatory Enforcement Fairness Act (Congressional Review Act or CRA), 5 U.S.C. 801–808. Pursuant to the CRA, the Office of Information and Regulatory Affairs has designated this rule as a ''major rule.'' Accordingly, the rule will become effective no earlier than 60 days after its publication in the **Federal Register**.

Final Rule

This rule is published as a final rule.

List of Subjects in 29 CFR Part 103

Jurisdictional standards, Election procedures, Appropriate bargaining units, Joint Employers, Remedial Orders.

For the reasons set forth in the preamble, the National Labor Relations Board amends part 103 of title 29 of the Code of Federal Regulations as follows.

PART 103—OTHER RULES

■ 1. The authority citation for part 103 continues to read:

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

■ 2. Revise § 103.20 to read as follows:

§ 103.20 Election procedures and blocking charges.

(a) Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the processing of the petition to the election, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the further processing of the petition, the party shall simultaneously file, but not serve on any other party, a written offer of proof in support of the charge. The offer of proof shall provide the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block the processing of a petition shall also promptly make available to the regional director the witnesses identified in its offer of proof.

(b) If the regional director determines that the party's offer of proof describes evidence that, if proven, would interfere with employee free choice in an election, the regional director shall, absent special circumstances, hold the petition in abeyance and notify the parties of this determination.

(c) If the regional director determines that the party's offer of proof describes evidence that, if proven, would be inherently inconsistent with the petition itself, the regional director shall, absent special circumstances, hold the petition in abeyance and notify the parties of this determination; in appropriate circumstances, the regional director should dismiss the petition subject to reinstatement and notify the parties of this determination.

(d) If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate.

(e) If, after holding a petition in abeyance, the regional director determines that special circumstances have arisen or that employee free choice is possible notwithstanding the pendency of the unfair labor practices, the regional director may resume processing the petition.

(f) If, upon completion of investigation of the charge, the regional director determines that the charge lacks merit and is to be dismissed, absent withdrawal, the regional director shall resume processing the petition, provided that resumption of processing is otherwise appropriate.

(g) Upon final disposition of a charge that the regional director initially determined had merit, the regional director shall resume processing a petition that was held in abeyance due to the pendency of the charge, provided that resumption of processing is otherwise appropriate.

(h) The provisions of this section are intended to be severable. If any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.

■ 3. Revise § 103.21 to read as follows:

§ 103.21 Processing of petitions filed after voluntary recognition.

(a) An employer's voluntary recognition of a labor organization as exclusive bargaining representative of a unit of the employer's employees, based on a showing of the union's majority status, bars the processing of an election petition for a reasonable period of time for collective bargaining between the employer and the labor organization.

(b) A reasonable period of time for collective bargaining, during which the voluntary-recognition bar will apply, is defined as no less than 6 months after the parties' first bargaining session and no more than 1 year after that date.

(c) In determining whether a reasonable period of time for collective

small employer or labor union about all three rule changes.

[396] See fn. 292.

[397] See SBA Guide at 18.

[398] Id. at 19.

bargaining has elapsed in a given case, the following factors will be considered:

(1) Whether the parties are bargaining for an initial collective-bargaining agreement;

(2) The complexity of the issues being negotiated and of the parties' bargaining processes;

(3) The amount of time elapsed since bargaining commenced and the number of bargaining sessions;

(4) The amount of progress made in negotiations and how near the parties are to concluding an agreement; and

(5) Whether the parties are at impasse.

(d) In each case where a reasonable period of time is at issue, the burden of proof is on the proponent of the voluntary-recognition bar to show that further bargaining should be required before an election petition may be processed.

(e) Notwithstanding paragraph (a), an employer's voluntary recognition of a labor organization as exclusive bargaining representative of a unit of the employer's employees will not preclude the processing of a petition filed by a competing labor organization where authorized by Board precedent.

(f) This section shall be applicable to an employer's voluntary recognition of a labor organization on or after September 30, 2024.

(g) The provisions of this section are intended to be severable. If any paragraph of this section is held to be unlawful, the remaining paragraphs of this section not deemed unlawful are intended to remain in effect to the fullest extent permitted by law.

§ 103.22 [Removed]

■ 4. Remove § 103.22.

Dated: July 23, 2024.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2024–16535 Filed 7–26–24; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 52
Air Plan Partial Approval and Partial Disapproval; Wyoming; Regional Haze Plan for the Second Implementation Period; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0489; FRL–12135–01–R8]

Air Plan Partial Approval and Partial Disapproval; Wyoming; Regional Haze Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove the regional haze state implementation plan (SIP) submission submitted by the State of Wyoming on August 10, 2022 (Wyoming's 2022 SIP submission) under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the program's second implementation period. Wyoming's 2022 SIP submission addresses the requirement that states revise their long-term strategies every implementation period to make reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. Wyoming's 2022 SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to the CAA.

DATES: Written comments must be received on or before September 3, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2023–0489, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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://www2.epa.gov/dockets/commenting-epa-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.,* CBI or other information whose 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 electronically in *https://www.regulations.gov.* Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, telephone number: (303) 312–6252; email address: *dobrahner.jaslyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. What action is the EPA proposing?

The EPA is proposing to partially approve and partially disapprove a SIP submission submitted by the State of Wyoming to the EPA on August 10,

2022, addressing the requirements of the second implementation period of the RHR. Specifically, the EPA is proposing approval for the portions of Wyoming's 2022 SIP submission relating to 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress; 40 CFR 51.308(f)(4): reasonably attributable visibility impairment; 40 CFR 51.308(f)(5) and 40 CFR 51.308(g): progress report requirements; and 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements. For the reasons described in this document, the EPA is proposing disapproval for the remainder of Wyoming's 2022 SIP submission, which addresses 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308(f)(3): reasonable progress goals; and 40 CFR 51.308(i): FLM consultation. Consistent with section 110(k)(3) of the CAA, the EPA may partially approve portions of a submittal if those elements meet all applicable requirements and may disapprove the remainder so long as the elements are fully separable.[1]

II. Background and Requirements for Regional Haze Plans

A. Regional Haze

In the 1977 CAA amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[2] CAA section 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA section 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal areas (hereinafter referred to as ''Class I areas'') that is ''reasonably attributable'' to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA section 169B. The EPA promulgated the Regional Haze Rule (RHR), codified at 40 CFR 51.308 and 51.309,[3] on July 1, 1999. (64 FR 35714, July 1, 1999). On January 10, 2017, the EPA promulgated additional regulations that address visibility impairment for the second and subsequent implementation periods (82 FR 3078, January 10, 2017). These regional haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I areas.

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities that are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[4]

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. CAA section 169A(b)(2);[5] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR at 35768, July 1, 1999). Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' CAA section 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA section 169A(b)(2)(A); 40 CFR 51.308(d) and (e). States' first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR at 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area''; therefore, all states must submit regional haze SIPs.[6] Id. at 35721.

Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required

[1] *See* CAA section 110(k)(3) and July 1992 EPA memorandum titled ''Processing of State Implementation Plan (SIP) Submittals'' from John Calcagni, at *https://www.epa.gov/sites/default/files/2015-07/documents/procsip.pdf.*

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

[3] In addition to the generally applicable regional haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading and allow states to adopt alternatives to the point source application of BART.

[4] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used for expressing visibility and is measured in inverse megameters (Mm^{-1}). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (''2019 Guidance'') offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, *e.g.,* 2019 Guidance at 16, 19, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period,* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is $10 \ln (bext)/10\ Mm - 1$). 40 CFR 51.301.

[5] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state Class I areas by providing that states must address visibility impairment ''in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[6] In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. See 40 CFR 51.300(b), (d)(3).

elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states' long-term strategies. The first planning period [7] RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA section 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five-year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.[8] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that states' long-term strategies must include the ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s) [9] (FLMs) responsible for each Class I area according to the requirements in CAA section 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify states' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the second and subsequent implementation periods focused on the requirement that states' SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for states to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period regional haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[10] On July 8, 2021, the EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[11] Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' (''2018 Visibility Tracking Guidance''),[12] and the June 2020 ''Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' and associated Technical Addendum (''2020 Data Completeness Memo'').[13]

[7] The EPA uses the terms ''implementation period'' and ''planning period'' interchangeably.

[8] The EPA established the URP framework in the 1999 RHR to provide ''an equitable analytical approach'' to assessing the rate of visibility improvement at Class I areas across the country. The starting point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, the EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, the EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR at 35731–32. That is, the URP and the 2064 date are not enforceable targets but are rather tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078, 3084, January 10, 2017).

[9] The EPA's regulations define ''Federal Land Manager'' as ''the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.'' 40 CFR 51.301.

[10] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[11] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[12] Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

[13] Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-*

As explained in the 2021 Clarifications Memo, the EPA intends the second implementation period of the regional haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards and Prevention of Significant Deterioration programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.[14]

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. To address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[15] which include representation from state and Tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from state and tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Western Regional Air Partnership (WRAP), one of the five regional planning organizations described in the previous paragraph, is a collaborative effort of state governments, local air agencies, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Western United States. Members include the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, and 28 tribal governments.[16] The federal partner members of WRAP are the EPA, U.S. National Parks Service (NPS), U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service (USFS), and the Bureau of Land Management (BLM).

The WRAP membership formed a workgroup to develop a planning framework for state regional haze second planning period SIPs. Based on emissions and monitoring data supplied by its membership, WRAP produced a technical system to support regional modeling of visibility impacts at Class I areas across the West. The WRAP Technical Support System consolidated air quality monitoring data, meteorological and receptor modeling data analyses, emissions inventories and projections, and gridded air quality/visibility regional modeling results. The Technical Support System is accessible by member states and allows for the creation of maps, figures, and tables to export and use in state plan development. It also maintains the original source data for verification and further analysis.

C. Status of Wyoming's Regional Haze Plan for the First Implementation Period

The CAA requires that regional haze plans for the first implementation period (2008 through 2018) include, among other things, a long-term strategy for making reasonable progress and BART requirements for certain older stationary sources, where applicable.[17] In 2011 and 2012, Wyoming submitted first implementation period regional haze SIP submissions addressing the requirements of 40 CFR 51.309, which superseded its regional haze SIP submissions from 2003, 2004, and 2008.[18] On December 12, 2012, the EPA approved the 2011 and 2012 SIP submissions as meeting the requirements of the CAA and the RHR, with the exception of 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g).[19] The EPA then issued a final rule in 2014 (2014 final rule) partially approving and partially disapproving the 2011 SIP submission under 40 CFR 51.309(g) and promulgating a FIP for the disapproved portions (together referred to as the regional haze implementation plan).[20]

Several parties filed petitions for review of the 2014 final rule in the U.S. Court of Appeals for the Tenth Circuit, challenging the portions of the rule related to NO_X BART determinations for several facilities.[21] The parties settled the challenges regarding Laramie River Station Units 1–3 [22] and Dave Johnston Unit 3. The Court ruled on the remaining issues in 2023. It upheld the EPA's approval of Wyoming's NO_X BART determination for Naughton Units 1 and 2 and vacated and remanded the EPA's disapproval of Wyoming's NO_X

usage-and-completeness-regional-haze-program. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

[14] See, *e.g.,* H.R. Rep. No. 95–294 at 205 (''In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory Class I increments of [the PSD program] do not adequately protect visibility in Class I areas'').

[15] RPOs are sometimes also referred to as ''multi-jurisdictional organizations,'' or MJOs. For the purposes of this document, the terms RPO and MJO are synonymous.

[16] A full list of WRAP members is available at *https://www.westar.org/wrap-council-members/.*

[17] Requirements for regional haze SIPs for the first implementation period are also contained in CAA section 169A(b)(2). The 1999 Regional Haze Rule provided two paths for states to address regional haze in the first implementation period. Most states must follow 40 CFR 51.308(d) and (e), which require states to perform individual point source BART determinations and evaluate the need for other control strategies. Additionally, the requirements for addressing regional haze visibility impairment in the sixteen Class I areas covered by the Grand Canyon Visibility Transport Commission are found in 40 CFR 51.309(d)(4), which contains general requirements pertaining to stationary sources and market trading and allows states to adopt alternatives to the point source application of BART. See also 40 CFR 51.308(b). States with Class I areas covered by the Grand Canyon Visibility Transport Commission could choose to submit a regional haze SIP under 40 CFR 51.308 or 40 CFR 51.309.

[18] These SIP submissions were submitted on January 12, 2011; April 19, 2012; December 24, 2003; May 27, 2004; and November 21, 2008.

[19] 77 FR 73926 (December 12, 2012).

[20] 79 FR 5032 (January 30, 2014).

[21] *Basin Electric Cooperative* v. *EPA,* No. 14–9533 (10th Cir.); *Wyoming* v. *EPA,* No. 14–9529 (10th Cir.); *PacifiCorp* v. *EPA,* No. 14–9534 (10th Cir.); *Powder River Basin Resource Council, et al.* v. *EPA,* No. 14–9530 (10th Cir.).

[22] Following that settlement, on May 20, 2019, the EPA approved SIP revisions and revised the FIP to: (1) modify the SO_2 emissions reporting requirements for Laramie River Station Units 1 and 2; (2) revise the NO_X emission limits for Laramie River Station Units 1, 2 and 3; and (3) establish an SO_2 emission limit averaged annually across Laramie River Station Units 1 and 2. 84 FR 22711 (May 20, 2019).

BART determination (and the EPA's subsequent promulgation of a FIP emission limit) for Wyodak power plant.[23]

On November 28, 2017, Wyoming submitted its first progress report SIP submission. It detailed progress made toward achieving reasonable progress for visibility improvement and included a determination of adequacy of the State's regional haze implementation plan to meet reasonable progress goals. In 2020, we approved Wyoming's progress report SIP submission.[24]

In addition, in 2019, we approved an additional first implementation period SIP submission regarding BART requirements for Naughton Unit 3.[25] On April 10, 2024, we proposed to approve additional revisions for Jim Bridger Power Plant that Wyoming submitted for the first implementation period regional haze SIP.[26]

D. Wyoming's Regional Haze Plan for the Second Implementation Period

On August 10, 2022, Wyoming submitted a SIP submission to address its regional haze obligations for the second implementation period (2018–2028). Wyoming's 2022 SIP submission contains the State's long-term strategy to address regional haze visibility impairment for each Class I area within the State and each Class I area outside the State that may be affected by emissions from the State. In developing its long-term strategy, the State examined the need to implement additional enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress since the first implementation period. Specifically, Wyoming's 2022 SIP submission contains an assessment of visibility progress made at Class I areas since the first implementation period and a long-term strategy to address regional haze visibility impairment at the 23 Class I areas the State identified, including: Wyoming's selection of sources that may affect visibility in Class I areas within the State and outside the State for four-factor analysis; its evaluation of the selected sources to determine what emission reduction measures constitute reasonable progress for the long-term strategy; regional scale modeling of the State's long-term strategy to set reasonable progress goals for 2028; and ultimately, Wyoming's determinations on what control measures are necessary for the long-term strategy to address regional haze visibility impairment in the 23 Class I areas. The State concluded that no additional emission reduction measures for any Wyoming facilities are required for the second implementation period under its long-term strategy.

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

Under the CAA and the EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021.[27] Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA section 169A(b)(2)(B). To this end, § 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in § 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis[28] and (f)(4) through (6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [29] that states must consider in developing their long-term strategies. See 40 CFR 51.308(f)(2). A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2)–(3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements

[23] *Wyoming* v. *EPA,* 78 F.4th 1171, 1175, 1181, 1183 (10th Cir. 2023).

[24] 85 FR 21341 (April 17, 2020) (proposed rule); 85 FR 38325 (June 26, 2020) (final rule).

[25] 84 FR 10433 (March 21, 2019).

[26] 89 FR 25200 (April 10, 2024). The EPA has not yet issued a final rule.

[27] Wyoming is one of a few states with outstanding first planning period obligations. The EPA is not precluded from acting on a second planning period SIP submission on the basis that a state has outstanding first planning period obligations. All states have an obligation to submit second planning period SIP submissions by July 31, 2021, regardless of the status of first planning period obligations. After a second planning period SIP submission is submitted to the EPA for review, the EPA is statutorily required to review and act on that submission within 12 months of it being deemed complete. See CAA section 110(k)(1)(B), 42 U.S.C. 7410(k)(1)(B). Throughout actions on the second planning period, the EPA will continue to work with those states who have outstanding first planning period obligations to ensure there is no gap that could affect the continuous progress of visibility improvement.

[28] The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), ''tracked the actual planning sequence.'' (82 FR at 3091).

[29] The five ''additional factors'' for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

applicable to all SIP revisions under the CAA and the EPA's regulations. See CAA section 169A(b)(2); CAA section 110(a). Upon approval by the EPA, a SIP is enforceable by the Agency and the public under the CAA. If the EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if it disapproves the SIP, the Agency must promulgate a federal implementation plan (FIP) that satisfies the applicable requirements. CAA section 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a state to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR at 35720–22, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

B. Calculation of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this section apply only to states having Class I areas within their borders; the required calculations must be made for each such Class I area. The EPA's 2018 Visibility Tracking Guidance [30] provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR at 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).[31] 40 CFR 51.301. A state must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,[32] by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.[33] Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR at 3107 footnote 116.

The EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area outside the state that may be affected by emissions from the state. The long-term strategy ''must include the enforceable emissions

[30] The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: ''Guidance for Tracking Progress Under the Regional Haze Rule,'' which can be found at *https://www.epa.gov/sites/default/files/2021-03/documents/tracking.pdf.*

[31] This document also refers to the 20% clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[32] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says ''most impaired days or the clearest days'' where it should say ''most impaired days and clearest days.'' This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR at 3098: ''In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of 'or' has been corrected to 'and' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.''

[33] Being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I area is making ''reasonable progress'' and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. See, *e.g.,* 82 FR at 3093.

limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis.[34] The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As the EPA previously explained, consistent with the first implementation period, the EPA generally expects that each state will analyze at least SO_2 and NO_X in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that ''an analysis of control measures is not required for every source in each implementation period,'' and that ''[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a state may not need to analyze control measures for all its sources in a given SIP revision.'' 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process ''should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'' 2021 Clarifications Memo at 3.

The EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[35]

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[36] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA's reasonable progress mandate.'' 82 FR at 3091. Thus, for each source it has selected for four-factor analysis,[37] a state must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. Id. at 3088. The 2019 Guidance provides that ''[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.'' 2019 Guidance at 29.

The EPA's 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: ''A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.'' 2021 Clarifications Memo at 7. In addition to

[34] Four-factor analysis considers the four statutory factors specified in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i).

[35] Similarly, in responding to comments on the 2017 RHR Revisions the EPA explained that ''[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.'' Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

[36] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second implementation period.

[37] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR at 3088. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

add-on controls and other retrofits (*i.e.,* new emissions reduction measures for sources), the EPA explained that states should generally analyze efficiency improvements for sources' existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emissions rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emissions rates as potential control options. That is, a state should consider a source's recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA's recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing ''effective controls.'' See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[38] The 2019 Guidance provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, the EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, § 51.308(f)(2)(i) provides that a state ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, § 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to § 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's long-term strategy and in its SIP.[39] If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source's existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA section 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source's existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source's existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emissions rate, it may not be necessary to have those measures in the long-term strategy to prevent future emissions increases and future visibility impairment. The EPA's 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source's existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source's existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in § 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, § 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.[40] That is, a state's decisions about the emission reduction measures that are necessary to

[38] *See, e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket ID No. EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

[39] States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to the EPA for inclusion in their SIPs but are not required to do so. See, *e.g.,* 82 FR at 3108–09 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

[40] *See Arizona ex rel. Darwin* v. *U.S. EPA,* 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska* v. *EPA,* 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota* v. *EPA,* 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma* v. *EPA,* 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); *cf. Nat'l Parks Conservation Ass'n* v. *EPA,* 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep't of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 485, 490 (2004).

make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state's long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [41] that states must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. The EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, states generally should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses state boundaries, § 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See id.; 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR at 3091. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states' long-term strategies for making reasonable progress towards the national visibility goal for Class I areas within the state. See 40 CFR 51.308(f)(3)(iii)–(iv). States in which Class I areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.[42] The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they ''provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, § 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and that show no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR at 3097–98.

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal, the RHR

[41] The five ''additional factors'' for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

[42] RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses, control determinations by other states, and other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' The 2019 Guidance provides suggestions about how such a ''robust demonstration'' might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.,* control measures already required or anticipated before the four-factor analysis is conducted) is not a ''safe harbor'' from the CAA's and RHR's requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is ''reasonable progress.'' See 82 FR at 3093, 3099–3100; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this section apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A state with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii) and (iii). Section 51.308(f)(6)(v) further requires that all states' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to the EPA's review as part of the Agency's evaluation of a SIP revision.[43] All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its regional haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51, subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.[44]

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [45] Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess reasonably attributable visibility impairment, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), (82 FR at 3119, January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of

[43] See ''Step 8: Additional requirements for regional haze SIPs'' in the 2019 Guidance at 55.

[44] Id.

[45] The EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, § 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions to assess progress made to date. See 40 CFR 51.308(g)(3)(ii). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(3)(iii), (f)(5). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(4), (f)(5). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must explain whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed ''early enough,'' but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). For the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of Wyoming's Regional Haze Plan for the Second Implementation Period

In section IV. of this document, we describe Wyoming's 2022 SIP submission and evaluate it against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

A. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to have a long-term strategy for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement in 40 CFR 51.308(f) for the second and subsequent planning periods for regional haze. 40 CFR 51.308(f)(2) requires states to submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state.

There are seven designated Class I areas within the State of Wyoming, including two national parks managed by the U.S. National Parks Service (Grand Teton National Park and Yellowstone National Park) and five wilderness areas managed by the U.S. Forest Service (Bridger Wilderness Area, Fitzpatrick Wilderness Area, North Absaroka Wilderness Area, Teton Wilderness Area, and Washakie Wilderness Area).[46]

Grand Teton National Park, established in 1929, occupies 305,504 acres along the Teton Range and Jackson Lake. It is adjacent to the Teton Wilderness Area to the northeast and is 6 miles south of Yellowstone National Park. In 2018, Grand Teton National Park had 3,491,151 visitors.

Yellowstone National Park became the world's first national park on March 1, 1872, and occupies 2,020,625 acres[47] in northwestern Wyoming, overlapping into Montana and Idaho. In 2018, Yellowstone National Park had 4,114,999 visitors.

The Bridger Wilderness Area, consisting of 392,160 acres, is situated on the western slope of the Wind River Range in Wyoming and extends approximately 80 miles along the western slope of the Continental Divide. It lies south of the other six Class I areas in Wyoming and is on the western border of the Fitzpatrick Wilderness Area.

The Fitzpatrick Wilderness Area, designated in 1976, occupies 191,103 acres and is located on the east slope of the northern Wind River Range in Wyoming along the Continental Divide, which makes up its western border. It shares its western border with the Bridger Wilderness Area and its eastern border with the Wind River Indian Reservation.

The North Absaroka Wilderness Area, designated in 1964, is part of the Greater Yellowstone Area of northwestern Wyoming. It is located along the northeastern boundary of Yellowstone National Park, east of the Continental Divide, and occupies 351,104 acres.

The Teton Wilderness Area encompasses 557,311 acres that straddle the Continental Divide in western Wyoming. It is bordered by Yellowstone National Park to the north, Grand Teton National Park to the west, and the Washakie Wilderness Area to the east.

The Washakie Wilderness Area encompasses 686,584 acres. It is bordered on the west by the Teton Wilderness Area and Yellowstone

[46] Wyoming 2022 SIP submission at 20, 35–57.

[47] Yellowstone National Park has 2,219,737 acres overall, of which 2,020,625 acres are in Wyoming. EPA. List of Areas Protected by the Regional Haze Program. *https://www.epa.gov/visibility/list-areas-protected-regional-haze-program.*

National Park, and the North Absaroka Wilderness Area lies to the north.

Additionally, Wyoming identified 16 Class I areas outside the State where visibility may be affected by Wyoming sources (table 1).[48]

TABLE 1—CLASS I AREAS IN OTHER STATES THAT MAY BE AFFECTED BY WYOMING SOURCES

State	Class I area
Colorado	Eagles Nest Wilderness Area.
Colorado	Flat Tops Wilderness Area.
Colorado	Maroon Bells-Snowmass Wilderness Area.
Colorado	Mount Zirkel.
Colorado	Rawah Wilderness.
Colorado	Rocky Moutain National Park.
Colorado	West Elk Wilderness.
Idaho	Craters of the Moon National Monument.
Montana	Red Rocks Lakes National Wildlife Refuge.
North Dakota	Theodore Roosevelt National Park.
Nevada	Jarbidge Wilderness.
South Dakota	Badlands/Sage Creek Wilderness.
South Dakota	Wind Cave National Park.
Utah	Arches National Park.
Utah	Canyonlands National Park.
Utah	Capitol Reef National Park.

B. Calculation of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and Uniform Rate of Progress for Class I Areas Within the State

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

The IMPROVE monitoring network measures visibility impairment caused by air pollution at Class I areas. Wyoming's 2022 SIP submission provides visibility conditions for each IMPROVE monitor and associated Class I area in Wyoming (table 2).[49]

TABLE 2—VISIBILITY CONDITIONS (DECIVIEWS) FOR WYOMING IMPROVE STATIONS

Monitor ID	Class I areas	Baseline (2000–2004)	Period (2008–2012)	Current (2014–2018)	Natural (2064)	Progress since baseline (2000–2004)–(2014–2018)	Progress during last implementation period (2008–2012)–(2014–2018)	Difference between current (2014–2018) and natural (2064)
Most Impaired Days								
YELL2	Yellowstone National Park, Grand Teton National Park, Teton Wilderness Area.	8.3	7.5	7.5	4.0	0.8	0	3.5
NOAB1	Washakie Wilderness Area, North Absaroka Wilderness Area.	8.8	7.7	7.2	4.5	1.6	0.5	2.7
BRID1	Bridger Wilderness Area, Fitzpatrick Wilderness Area.	8.0	7.2	6.8	3.9	1.2	0.4	3.5
Clearest Days								
YELL2	Yellowstone National Park, Grand Teton National Park, Teton Wilderness Area.	2.6	1.5	1.4	0.4	1.1	0.1	1
NOAB1	Washakie Wilderness Area, North Absaroka Wilderness Area.	2.0	1.4	0.7	0.6	1.3	0.7	0.1
BRID1	Bridger Wilderness Area, Fitzpatrick Wilderness Area.	2.1	1.1	0.9	0.3	1.2	0.2	0.6

The State also determined the uniform rate of progress for the most impaired and clearest days for all Wyoming Class I areas.[50] Under 40 CFR 51.308(f)(1)(vi)(B), Wyoming chose to adjust the uniform rate of progress glidepath for all the State's Class I areas to account for impacts from anthropogenic sources outside the United States and impacts from wildland prescribed fires.[51] [52] Wyoming also provided haze indices and the

[48] To identify Class I areas in other states that may be affected by emissions from Wyoming sources, the State used a threshold of Q/d > 10. Wyoming 2022 SIP submission at 64–67.

[49] Wyoming 2022 SIP submission at 34–63.

[50] Wyoming 2022 SIP submission at Figures 6–9 and 6–10 (YELL2), Figures 6–18 and 6–19 (NOAB1), and Figures 6–26 and 6–27 (BRID1).

[51] Wildland prescribed fires are those conducted with the objective to establish, restore, and/or maintain sustainable and resilient wildland ecosystems, to reduce the risk of catastrophic wildfires, and/or to preserve endangered or threatened species during which appropriate basic smoke management practices were applied.

[52] Wyoming 2022 SIP submission at 239–242.

uniform rate of progress for IMPROVE monitors and associated Class I areas outside the State.[53]

Based on the information provided in Chapter 6 of Wyoming's 2022 SIP submission, the EPA is proposing to approve the State's visibility condition calculations for Grand Teton National Park, Yellowstone National Park, Bridger Wilderness Area, Fitzpatrick Wilderness Area, North Absaroka Wilderness Area, Teton Wilderness Area, and Washakie Wilderness Area, as meeting the requirements of 40 CFR 51.308(f)(1) related to the calculations of baseline, current, and natural visibility conditions; progress to date; and the URP.

C. Long-Term Strategy

Each state having a Class I area within its borders or emissions that may affect visibility in any Class I area outside the state must develop a long-term strategy for making reasonable progress towards the national visibility goal for each impacted Class I area. CAA section 169A(b)(2)(B). As explained in the Background section of this document, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.,* additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategy, a state must also consider the five additional factors in 40 CFR 51.308(f)(2)(iv). As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(iii).

1. Summary of Wyoming's 2022 SIP Submission

Wyoming identified 23 Class I areas that must be addressed in its long-term strategy.[54] Under 40 CFR 51.308(f)(2)(i), SIP submittals must include a description of the criteria a state used to determine which sources or groups of sources to evaluate through four-factor analysis. Wyoming used a Q/d screening approach to identify sources for four-factor analysis. The Q/d screening metric uses a source's annual emissions in tons (Q) divided by the distance in kilometers (d) between the source and the nearest Class I area, along with a reasonably selected threshold for this metric. The larger the Q/d value, the greater the source's expected effect on visibility in each associated Class I area. Wyoming opted to use the Q/d screening metric because, according to the State, it accounts for three of the largest anthropogenically-sourced pollutants (NO_X, SO_2, and PM) that contribute to visibility impairment in Wyoming Class I areas.[55]

Using a screening threshold of Q/d > 10 and emissions information from the 2014 National Emission Inventory (NEI), Wyoming initially identified 20 sources in the State that may be affecting visibility at Class I areas in Wyoming and surrounding states.[56] Upon contacting the identified sources, the State received updated emissions information from 14 of the 20 sources,[57] and the State further revised emissions values for the sources that did not provide updated emissions information to reflect the 2017 NEI.[58] Using updated emissions information to calculate Q/d, the State screened out five sources because they fell below its Q/d threshold of 10.[59] Three coal facilities (Antelope Mine, Black Thunder Mine, and North Antelope Rochelle Mine) were also screened out from further consideration based on the State's assessment that coarse mass PM, the primary component of emissions from those mines, has relatively little effect on visibility in Class I areas and should not be included in the mines' Q values.[60] Ultimately, the State selected twelve sources to perform a four-factor analysis (table 3).

TABLE 3—FACILITIES SCREENED IN USING Q/d AND CLASS I AREA WITH MAXIMUM Q/d

Facility name	Class I area with maximum Q/d	Class I area state	Distance (km) to Class I area	Updated Q/d value (tpy/km)			
				$NO_X + SO_2 + PM_{10}$	NO_X	SO_2	PM_{10}
Jim Bridger Power Plant *(PacifiCorp).*	Bridger Wilderness Area ..	WY	97.39	160	83.75	68.48	7.77
Laramie River Station Power Plant *(Basin Electric).*	Rawah Wilderness Area ..	CO	164.27	85.89	36.25	42.80	6.85
Laramie Portland Cement *(Mountain Cement Company).*	Rocky Mountain National Park.	CO	30.54	82.23	73.16	4.19	4.87
Naughton Power Plant *(PacifiCorp)*	Bridger Wilderness Area ..	WY	141.64	78.57	39.31	28.58	10.68
Dave Johnston Power Plant *(PacifiCorp).*	Wind Cave National Park	SD	198.38	77.33	32.15	41.38	3.80
Green River Works *(TATA Chemicals).*	Bridger Wilderness Area ..	WY	122.11	43.81	16.08	18.52	9.22
Westvaco Facility *(Genesis Alkali)*	Bridger Wilderness Area ..	WY	122.62	38.23	17.04	11.96	9.23

[53] Wyoming 2022 SIP submission at 70–106.

[54] Wyoming 2022 SIP submission at 34, 64.

[55] Wyoming 2022 SIP submission at Figures 8–1 and 8–2 (YELL2), Figures 8–3 and 8–4 (NOAB1), and Figures 8–5 and 8–6 (BRID1), and 121.

[56] Wyoming 2022 SIP submission at Figure 10–1.

[57] The State did not receive updated emissions information from Westvaco, Wyodak, Laramie Portland Cement, Naughton Power Plant, Dave Johnston Power Plant, and Rock Springs Coke Production Facility. Wyoming 2022 SIP submission at 125–26.

[58] Wyoming noted that the 2017 NEI was released in April 2020, after sources were asked to prepare four-factor analyses. Wyoming 2022 SIP submission at 125.

[59] Rock Springs Coke Production Facility, Cordero Rojo Complex, Solvay Green River Soda Ash Plant, Simplot Rock Springs Fertilizer Complex, and HollyFrontier Refinery. Wyoming 2022 SIP submission at 128.

[60] Wyoming 2022 SIP submission at 128–130 and appendix B.

TABLE 3—FACILITIES SCREENED IN USING Q/d AND CLASS I AREA WITH MAXIMUM Q/d—Continued

Facility name	Class I area with maximum Q/d	Class I area state	Distance (km) to Class I area	Updated Q/d value (tpy/km)			
				$NO_X + SO_2 + PM_{10}$	NO_X	SO_2	PM_{10}
Wyodak Power Plant *(PacifiCorp)* ..	Wind Cave National Park	SD	167.23	37.53	21.89	14.65	0.99
Elk Basin Gas Plant *(Contango Resources, Inc.)*.	North Absaroka Wilderness Area.	WY	52.84	27.64	16.58	10.82	0.24
Granger Soda Ash Facility *(Genesis Alkali)*.	Bridger Wilderness Area ..	WY	119.74	15.49	10.94	1.62	2.93
Lost Cabin Gas Plant *(Burlington Resources)*.	Washakie Wilderness Area.	WY	132.94	13.06	0.54	12.28	0.24
Cheyenne Fertilizer *(Dyno Nobel Inc.)*.	Rocky Mountain National Park.	CO	81.73	12.33	8.57	0.01	3.76

The State then requested each of the twelve sources to submit four-factor analyses for its review and consideration.[61] As described in this document, some sources elected not to do so, arguing that four-factor analysis should not be required for their facilities. Wyoming attached the facilities' four-factor analyses (or other submissions) as Appendices C–L to its 2022 SIP submission. Chapter 11 of the SIP submission contains Wyoming's evaluation of the four statutory factors for each source (or the reasons for not performing a four-factor analysis) and Wyoming's determinations of the source-specific emission reduction measures necessary to make reasonable progress. In sections IV.C.1.a.–l. of this document, we summarize the four-factor analyses or other facility submissions for the twelve selected sources.

a. PacifiCorp—Jim Bridger Power Plant[62]

PacifiCorp's Jim Bridger Power Plant is located in Sweetwater County, Wyoming. Jim Bridger is comprised of four identically sized nominal 530 megawatts (MW) tangentially coal-fired boilers that have a total net generating capacity of 2,120 MW. Emissions from Jim Bridger may affect visibility in 17 Class I areas in Colorado, Montana, Utah, and Wyoming (table 32 in section IV.C.2.a. of this document).

Neither the State nor PacifiCorp conducted a four-factor analysis for this source. Relying on the ''facility analysis information'' submitted by PacifiCorp (appendix C to Wyoming's 2022 SIP submission), the State concluded that Jim Bridger Units 1–4 already have effective NO_X and SO_2 emission control technologies in place (table 4).

TABLE 4—INSTALLED NO_X AND SO_2 EMISSIONS CONTROLS AT JIM BRIDGER UNITS 1–4

Unit	SO_2 controls	NO_X controls
1	FGD[1]	LNB[2]/SOFA.[3]
2	FGD	LNB/SOFA.
3	FGD	LNB/SOFA + SCR.[4]
4	FGD	LNB/SOFA + SCR.

[1] Flue gas desulfurization (FGD).
[2] Low NO_X burners (LNB).
[3] Separated overfire air (SOFA).
[4] Selective catalytic reduction (SCR).

Additionally, the State describes a consent decree between Wyoming and PacifiCorp allowing for the short-term continued operation of Jim Bridger Units 1–2, subject to lower plant-wide month-by-month permitted emission limits and an annual emissions cap for NO_X and SO_2, until Units 1–2 are converted to natural gas in 2024.[63] Finally, the State notes that dry sorbent injection (DSI) was not recommended for Jim Bridger because the existing SO_2 controls are more efficient.

In its response to the State's initial request to submit a four-factor analysis,[64] PacifiCorp asserted that Jim Bridger should be excluded from that requirement, and consequently the facility should not be analyzed or required to install any additional controls or take further actions during the regional haze second planning period. First, PacifiCorp claimed that Jim Bridger Units 1–4 already have effective NO_X and SO_2 controls in place, thereby exempting these units from further analysis. Specifically, PacifiCorp referenced: (1) FGD scrubber systems, installed on all units, as meeting the applicable alternative SO_2 emission limit of the 2012 Mercury and Air Toxics Standards (MATS); (2) LNB/SOFA NO_X emission controls installed in 2010 (Unit 1), 2006 (Unit 2), 2007 (Unit 3), and 2008 (Unit 4); and (3) SCR NO_X emission controls installed in 2015 (Unit 3) and 2016 (Unit 4). PacifiCorp also referenced plant-wide monthly-block NO_X and SO_2 emission limits, which it stated have been demonstrated to achieve greater reasonable progress and visibility improvement than could be achieved through installation of SCR at Jim Bridger Units 1 and 2 and at a substantially lower cost. PacifiCorp contended that these circumstances align with the examples provided in the EPA's 2019 Guidance, which detail scenarios[65] in which it may be reasonable for a state not to select a particular source for further analysis, including: (1) FGD controls that meet the applicable alternative SO_2 emission limit of the 2012 MATS rule for power

[61] Id. at 123–25.

[62] This facility is addressed at pages 134–35 and appendix C of the Wyoming 2022 SIP submission.

[63] The consent decree was approved by the Wyoming First Judicial District Court on February 14, 2022, and requires Jim Bridger Units 1 and 2 to convert to natural gas with NO_X emission limits of 0.12 lb/MMBtu (30-day rolling average) and 1,314 tons/year per unit along with a 41.6% reduction in maximum heat input.

[64] Wyoming 2022 SIP submission, appendix C.

[65] 2019 Guidance at 22–25.

plants; (2) NO_X and SO_2 controls that were installed during the first planning period and operate year-round with an effectiveness of at least 90 percent on a pollutant-specific basis (*e.g.,* FGD or SCR); and (3) BART-eligible units that installed and began operating controls to meet BART emission limits for the first regional haze implementation period.

Second, PacifiCorp argued that recent decision making regarding emission controls for the first implementation period and PacifiCorp's installation of post-combustion controls during that period should exempt Jim Bridger from further analysis during the second implementation period. PacifiCorp referenced the reasonable progress ''reassessment'' conducted under 40 CFR 51.308(d)(1) for the first implementation period, which led to Wyoming's submission of a first implementation period SIP revision containing emission limits associated with the conversion from coal-firing to natural gas-firing at Units 1–2.[66] PacifiCorp also highlighted the 2015–2016 installation of SCR on Units 3–4 and FGD scrubbers upgraded on Units 1–4 between 2008–2011. PacifiCorp argued that these first implementation period controls eliminate the need for a four-factor analysis for the second implementation period, pointing to the EPA's statement in the 2019 Guidance that ''it may be appropriate for a state to rely on a previous . . . reasonable progress analysis for the characterization of a factor, for example information developed in the first implementation period on the availability, cost, and effectiveness of controls for a particular source, if the previous analysis was sound and no significant new information is available.'' [67]

Third, PacifiCorp asserted that Jim Bridger Units 1–2 are exempt from four-factor analysis for the second implementation period because, under the company's 2019 Integrated Resource Plan (IRP), Unit 1 was scheduled for retirement by the end of 2023 and Unit 2 was scheduled for retirement before the end of 2028.[68] Those scheduled closures both fall within the second planning period, although PacifiCorp acknowledged it is not subject to an enforceable obligation to close any units at Jim Bridger.

Lastly, PacifiCorp stated that under the EPA's 2019 Guidance, Wyoming may consider changes in operating parameters, such as those resulting from renewable energy sources coming online, to exempt Jim Bridger Units 1–4 from four-factor analysis. PacifiCorp cited its 2019 IRP,[69] which documents plans to make operational adjustments at Jim Bridger to accommodate renewable energy resources. PacifiCorp stated that these changes will cause future emissions at Jim Bridger to differ significantly from historical emissions.

b. PacifiCorp—Naughton Power Plant [70]

PacifiCorp's Naughton Power Plant is located in Lincoln County, Wyoming. Naughton is comprised of two tangentially-fired units burning pulverized coal (Units 1–2) and one natural gas-fired unit (Unit 3), which have a total net generating capacity of 700 MW. Emissions from Naughton may affect the visibility in 17 Class I areas in Colorado, Idaho, Montana, Nevada, Utah, and Wyoming (table 32).

Neither the State nor PacifiCorp conducted a four-factor analysis for Naughton. Instead, Wyoming refers to the ''facility analysis information'' submitted by PacifiCorp, which Wyoming included as appendix C in its 2022 SIP submission. The State references PacifiCorp's 2019 IRP, which includes the planned retirement of Units 1 and 2 by the end of 2025.[71] Unit 3 ceased coal combustion in 2019 and converted to natural gas that same year. The State also notes that Naughton Units 1–2 already have NO_X and SO_2 emission control technologies in place (table 5).

TABLE 5—INSTALLED NO_X AND SO_2 EMISSIONS CONTROLS AT NAUGHTON UNITS 1–2

Unit	SO_2 controls	NO_X controls
1	FGD	LNB/SOFA.
2	FGD	LNB/SOFA.

The State further explains that although its modeling incorporated the planned retirements and associated emissions reductions at Units 1–2, the State is not crediting the planned emissions reductions until the facility submits a permit application and the State issues a permit. The State notes that DSI is not being considered for Units 1–2 because the existing scrubbers are more effective for SO_2 removal. Wyoming states that it intends to conduct additional analysis on Units 1–2 in its 2025 regional haze progress report.

With respect to Naughton Unit 3, the State asserts that the 2019 conversion to natural gas resulted in a potential reduction of 8,909.5 tons of visibility impairing pollutants. The Q/d analysis of Naughton Unit 3 is 4.1, which the State notes is below its chosen threshold of Q/d > 10 for sources warranting a four-factor analysis.

In its response to the State's initial request to submit a four-factor analysis,[72] PacifiCorp asserted that its Naughton facility should be excluded from that requirement, and consequently should not be required to install any additional controls or take further actions during the regional haze second implementation period. PacifiCorp relied on arguments similar to those it provided for Jim Bridger, discussed in section IV.C.1.a. above.

First, PacifiCorp cited its 2019 IRP preferred portfolio, which includes the planned retirement of Naughton Units 1–2 by the end of 2025 (before the end of the regional haze second planning period in 2028). PacifiCorp acknowledged that it is under no legal obligation to close those units by that time, but detailed the plans in its 2019

[66] If approved, Wyoming's first planning period SIP submission would replace the State's previously approved source-specific NO_X long-term strategy determination for Jim Bridger Units 1 and 2 of 0.07 lb/MMBtu for each unit, which is associated with the installation of SCR controls. Wyoming found that conversion from coal-firing to natural gas-firing, together with NO_X emission limits of 0.12 lb/MMBtu (30-day rolling average) and 1,314 tons/year, and a heat input limit of 21,900,000 MMBtu/year, allows for identical reasonable progress during the first planning period as the installation of SCR controls. The EPA issued a notice of proposed rulemaking on this first implementation period SIP submission, 89 FR 25200 (April 10, 2024), but has not yet taken final action.

[67] 2019 Guidance at 36.

[68] PacifiCorp Integrated Resource Plan, October 18, 2019. Volume I at 12–13.

[69] Id., Volume I at 8.

[70] This facility is addressed at pages 136–37 and appendix C of the Wyoming 2022 SIP submission.

[71] Separately, and in the State's discussion of the long-term strategy to set reasonable progress goals, Wyoming refers to the planned retirement of Naughton Units 1–2 by the end of 2025 to meet the requirements of the CCR rule. Wyoming 2022 SIP submission at 227.

[72] Wyoming 2022 SIP submission, appendix C.

IRP to initiate closure of Units 1–2, complete regulatory notices and filings, engage in employee transition and community action plans, confirm transmission system reliability, and terminate, amend, or close out existing permits, contracts, and agreements.[73] PacifiCorp also pointed to the EPA's coal combustion residuals (CCR) disposal rule as further impacting the certainty of closure for Naughton Units 1–2 if that rule is finalized as proposed. According to PacifiCorp, the CCR rule would require it to construct new, lined CCR impoundments that PacifiCorp claimed would prove uneconomical for its customers, or otherwise cease operation and close the CCR impoundments by 2028.

Second, PacifiCorp asserted that Naughton Units 1–3 already have effective NO_X and SO_2 controls in place, thereby exempting these units from further analysis. Specifically, PacifiCorp referenced: (1) FGD scrubber systems, installed on Unit 1 in 2011 and on Unit 2 in 2012, as meeting the applicable alternative SO_2 emission limit of the 2012 MATS rule; and (2) LNB/SOFA NO_X emission controls installed on Unit 1 in 2012 and on Unit 2 in 2011. Additionally, PacifiCorp explained that Unit 3 ceased coal-fired operation in 2019 and is undergoing conversion to natural gas. These NO_X and SO_2 emission control technologies, according to PacifiCorp, align with the examples provided in the EPA's 2019 Guidance.

Third, PacifiCorp cited expected operational adjustments at Naughton to accommodate increases in renewable energy as an additional reason why a four-factor analysis is not required. PacifiCorp stated that Naughton's 2028 projected operations, or lack thereof, indicate that the plant's emissions will differ significantly from historical emissions due to PacifiCorp's changing portfolio and market opportunities to increase both energy efficiency and renewable resources.

Finally, PacifiCorp concluded that given the planned retirements of Units 1–2, Naughton would fall below Wyoming's Q/d threshold of >10 and should therefore be excluded from four-factor analysis at this time. According to PacifiCorp's calculations, Unit 3 would be the only operating unit throughout the second implementation period and has a Q/d of 4.1 for the nearest Class I area (Bridger Wilderness).

c. Basin Electric—Laramie River Station Power Plant[74]

Basin Electric's Laramie River Station Power Plant is located in Platte County, Wyoming and is comprised of three 614 MW (gross) subbituminous coal-fired boilers. Emissions from Laramie River Station may affect the visibility in 10 Class I areas in Colorado, South Dakota, and Wyoming (table 32).

Table 6 describes the installed NO_X, SO_2, and PM emissions controls for all three units.

TABLE 6—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT LARAMIE RIVER STATION 1–3

Unit	SO_2 controls	NO_X controls	PM controls
1	Wet FGD	LNB/OFA[1] + SCR	ESPs.[2]
2	Wet FGD	LNB/OFA + SNCR[3]	ESPs.
3	Dry FGD	LNB/OFA + SNCR	ESPs.

[1] Overfire air (OFA).
[2] Electrostatic precipitation (ESP).
[3] Selective non-catalytic reduction (SNCR).

Relying on an analysis submitted by the facility (included as appendix D in the Wyoming 2022 SIP submission), the State conducted a four-factor analysis for NO_X and SO_2 controls, but not for PM controls. The State did not evaluate Unit 1 for further NO_X emissions controls because it is equipped with SCR, which the State asserts is the best available control technology (BACT) for NO_X. The State evaluated SCR as the technically feasible option for further NO_X emissions control on Units 2 and 3 (table 7). For further SO_2 emissions control for Units 1 and 2, the State evaluated equipment upgrades and chemical additives to the existing wet FGD controls as well as the installation of a 6th absorber vessel. For SO_2 emissions controls for Unit 3, the State evaluated converting the existing ESP to a fabric filter (FF) and replacing the existing ESP and installing a new stand-alone FF (table 8).

TABLE 7—SUMMARY OF LARAMIE RIVER STATION UNITS 2–3 NO_X COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
2	SCR	1,917	$45,473,000	$23,722
3	SCR	2,676	45,058,000	16,840

TABLE 8—SUMMARY OF LARAMIE RIVER STATION UNITS 1–3 SO_2 COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
1	Wet FGD upgrades	235	$1,134,000	$4,824
	Wet FGD additives	494	5,018,000	10,156
	6th absorber vessel	587	7,399,000	12,611
2	Wet FGD upgrades	266	1,167,000	4,388
	Wet FGD additives	559	7,266,000	12,998

[73] PacifiCorp Integrated Resource Plan, October 18, 2019. Volume I at 22–23.

[74] This facility is addressed at pages 137–42 and appendix D of the Wyoming 2022 SIP submission.

TABLE 8—SUMMARY OF LARAMIE RIVER STATION UNITS 1–3 SO_2 COST ANALYSIS—Continued

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
3	6th absorber vessel	664	10,068,000	15,168
	ESP to FF conversion	703	20,079,000	28,551
	ESP to FF replacement	703	25,022,000	35,580

The State estimated the time necessary to achieve compliance using SCR controls at Units 2 and 3 to be 60 months. It estimated the time necessary to achieve compliance at Units 1 and 2 using wet FGD upgrades as 11 months, wet FGD additives as 12 months, and addition of a 6th absorber vessel as 60 months. The State estimated the time necessary to achieve compliance with ESP to FF conversion to be 32 months and ESP to FF replacement to be 46 months. These timelines do not include the time associated with regulation development or SIP approval.

The State identified several energy and non-air environmental impacts associated with the installation and operation of potential controls at Laramie River Station. For SCR on Units 2 and 3, the State noted increased auxiliary power requirements and heat rate penalty, potential decrease in ammonia slip emissions, and potential increase in SO_2 emissions. For SO_2 controls on Units 1 and 2, the State observed that (1) wet FGD upgrades may result in increased limestone consumption, increased solid FGD by-product management and disposal, and increased auxiliary power requirements and heat rate penalty; (2) wet FGD additives may result in increased limestone consumption, high reagent consumption cost, increased solid FGD by-product management and disposal, and increased auxiliary power requirements and heat rate penalty; and (3) 6th absorber vessel addition may require capital intensive projects, resulting in relocation of existing dewatering equipment, increased limestone and water consumption, increased solid FGD by-product management and disposal, and increased auxiliary power requirements and heat rate penalty. Finally, as to converting the existing ESP to a FF or replacing the existing ESP with a FF, the State noted impacts from capital intensive projects, extended unit outage or unit derate, and increased auxiliary power requirements and heat rate penalty.

In its consideration of the remaining useful life of Laramie River Station Units 1–3, the State used the 20-year equipment life of the control measures.

Finally, the State highlighted that NO_X emissions are below the permitted [75] threshold and have been decreasing overall, particularly for Units 1 and 3. The State also noted that it did not expect permit conditions to change between 2020 and the third implementation period. Likewise, the State determined that SO_2 emissions have declined by over 780 tons/year between the three units, SO_2 emissions trends do not show an increase in emissions, and permit conditions are not anticipated to change between 2020 and the third planning period.

Ultimately, after considering the four factors, historical emissions data, and permit conditions, Wyoming determined that no additional controls are necessary on Laramie River Station Units 1–3 in the second planning period for regional haze. The State concluded that further controls will be evaluated in the third planning period.

d. PacifiCorp—Dave Johnston Power Plant [76]

PacifiCorp's Dave Johnston Power Plant is located in Converse County, Wyoming and is comprised of four coal-fired units using local subbituminous coal. Units 3 and 4 were both subject to BART in the first planning period. Unit 3 is a nominal 230 MW pulverized coal-fired boiler that commenced service in 1964 and has a federally enforceable commitment to shut down by December 31, 2027. Unit 4 is a nominal 361 MW pulverized coal-fired tangential boiler that commenced service in 1972 and is equipped with FGD for SO_2 control, LNB/SOFA for NO_X control, and a baghouse retrofit for PM control. Emissions from Dave Johnston may affect the visibility in 13 Class I areas in Colorado, South Dakota, and Wyoming (table 32).

Neither the State nor PacifiCorp conducted a four-factor analysis for Units 1–3. Instead, the State referenced information supplied by PacifiCorp in appendix C of Wyoming's 2022 SIP submission and in PacifiCorp's 2019 IRP. The 2019 IRP includes the planned retirement of Units 1 and 2 by the end of 2027 [77] and the federally enforceable retirement of Unit 3 by December 31, 2027.[78] The State explained that its modeling incorporated the planned retirements and associated emission reductions at Units 1–3. However, until the facility submits a permit application and the State issues a permit, the State is not crediting the planned emission reductions and intends to conduct additional analysis on Units 1–3 in its 2025 regional haze progress report.

In its response to the State's initial request to submit a four-factor analysis,[79] PacifiCorp asserted that Dave Johnston should be excluded from that requirement, and consequently should not be required to install any additional controls or take further actions during the regional haze second planning period. PacifiCorp submitted a four-factor analysis only for Unit 4.

PacifiCorp argued that several factors alleviate the need for a four-factor analysis for Dave Johnston Units 1–3. First, PacifiCorp cited its 2019 IRP preferred portfolio, which includes the planned—but not federally enforceable—retirement of Dave Johnston Units 1–2 by the end of 2027 (before the end of the regional haze second planning period in 2028).[80] PacifiCorp also pointed to the EPA's proposed revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category as further impacting the certainty of closure for Units 1–2 if the rules are finalized as proposed. PacifiCorp contended that the rules would require generating units like Dave Johnston Units 1–2 that currently rely on the discharge of treated bottom ash transport water into

[75] Wyoming Permit Number 3–2–102.

[76] This facility is addressed at pages 143–45 and appendix C of the Wyoming 2022 SIP submission.

[77] Separately, and in the State's discussion of the long-term strategy to set reasonable progress goals, Wyoming refers to an enforceable federal commitment to close Dave Johnston Units 1–2 by the end of 2028 to meet the requirements of the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category for regulation of wastewater discharges from power plants. Wyoming 2022 SIP submission at 227.

[78] PacifiCorp Integrated Resource Plan, October 18, 2019. Volume I at 13.

[79] Wyoming 2022 SIP submission, appendix C.

[80] PacifiCorp Integrated Resource Plan, October 18, 2019. Volume I at 12–13.

a surface impoundment to close by December 31, 2028.

Second, PacifiCorp explained that Dave Johnston Unit 3 is subject to a federally enforceable requirement to shut down and is therefore not subject to four-factor analysis. As a result of its decision to pursue a shutdown compliance option provided in the EPA's 2014 FIP, PacifiCorp requested that the State revise BART permit MD–6041A to include an enforceable requirement for Unit 3 to cease operation by December 31, 2027.

Third, PacifiCorp argued that Dave Johnston Unit 3 currently has effective SO_2 and PM emissions control technology in place, which it asserted exempts this unit from further analysis. PacifiCorp referenced: (1) FGD scrubber systems, installed in 2010, as meeting the applicable alternative SO_2 emission limit of the 2012 MATS rule; and (2) a baghouse retrofit for PM emissions control installed in 2010. PacifiCorp argued that these SO_2 and PM emissions controls align with the examples provided in the EPA's 2019 Guidance.

Finally, PacifiCorp urged Wyoming to consider changes in operating parameters at Dave Johnston Units 1–3 to accommodate increased deployment of renewable energy resources in its portfolio. PacifiCorp stated that these operational adjustments will cause future emissions at Dave Johnston to decline compared to historical emissions. PacifiCorp argued that the EPA's 2019 Guidance allows for consideration of such circumstances when evaluating the need for a four-factor analysis.

Unlike Units 1–3, the State performed a four-factor analysis for Dave Johnston Unit 4 for NO_X and SO_2 controls. Table 9 describes the installed NO_X, SO_2, and PM controls at Unit 4.

TABLE 9—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT DAVE JOHNSTON, UNIT 4

Unit	SO_2 controls	NO_X controls	PM controls
4	FGD; SDA [1]	LNB/OFA	FF baghouse.

[1] Spray dryer absorber.

The State evaluated both SNCR and SCR as technically feasible options for NO_X control at Unit 4 (table 10). DSI was not evaluated for SO_2 control because, according to the State, scrubber upgrades are more effective than DSI for incremental pollution control; no further SO_2 analysis was conducted. No four-factor analysis for PM controls was provided.

TABLE 10—SUMMARY OF DAVE JOHNSTON UNIT 4 NO_X COST ANALYSIS

Control technology	Emission rate (lb/MMBtu) [1]	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
SNCR	0.12	187	$2,889,000	$15,411
SCR	0.05	1,035	11,881,000	11,480

[1] Pound per one million British thermal units (lb/MMBtu).

The State estimated the time necessary to achieve compliance using either SNCR or SCR at Unit 4 to be 2028, the end of the second planning period.

The State identified the following energy and non-air environmental impacts associated with the installation and operation of SCR: increased electrical energy to operate; the storage, use, and disposal of ammonia (a hazardous substance); and a potential increase in the amount of coal the unit would be required to burn to achieve the same amount of energy production, resulting in an increase of CCR waste requiring disposal, emissions of greenhouse gases, and consumption of water and other resources. The State also identified the storage and use of urea as a non-air environmental impact associated with the installation and operation of SNCR.

The State estimated the remaining useful life of Unit 4 to be 2027 based on PacifiCorp's 2019 IRP. However, the State also noted that PacifiCorp used a depreciable life of 20 years for SNCR and 30 years for SCR to estimate costs.

Based on the four-factor analysis, the State determined that installation of SNCR or SCR at Unit 4 is not cost-effective, would require long lead times before emissions reductions are achieved, would have negative energy and non-air environmental impacts, and would make the unit less likely to operate through the end of its remaining useful life. Additional consideration of historical emissions data and permit conditions, which Wyoming expects to remain the same, led the State to ultimately determine that no additional controls are necessary for Unit 4 in the second planning period.

e. Genesis Alkali—Westvaco [81]

Genesis Alkali's Westvaco facility is a trona ore [82] mine and soda ash production plant located in Sweetwater County, Wyoming. Westvaco has two existing subbituminous coal-fired boilers, Unit NS–1A and Unit NS–1B, with each having a design heat input rate of 887 MMBtu/hr. The facility also has two mono calciners (MONO5 and NS3) and one lime kiln (SM–1) that, combined with the two boilers, have emissions of NO_X, SO_2, and PM totaling at least 100 tons/year. Emissions from Westvaco may affect the visibility in 19 Class I areas in Colorado, Idaho, Montana, Utah, and Wyoming (table 32).

Table 11 describes the installed NO_X, SO_2, and PM emissions controls at Westvaco.

[81] This facility is addressed at pages 145–55 and appendix E of the Wyoming 2022 SIP submission.

[82] Trona is a mineral found in large deposits in Wyoming and elsewhere. It is a common source of sodium carbonate (soda ash).

TABLE 11—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT WESTVACO

Unit	SO_2 controls	NO_X controls	PM controls
NS–1A (coal-fired boiler)	Wet scrubber	LNB/OFA	ESP.
NS–1B (coal-fired boiler)	Wet scrubber	LNB/OFA	ESP.
NS3 (gas-fired calciner)		Good combustion [1]	ESP.
MONO5 (gas-fired calciner)		Good combustion [1]	Wet scrubber.
SM–1 (gas-fired kiln)		Good combustion [1]	Wet scrubber.

[1] Wyoming used the term ''good combustion practices'' to describe existing efforts to control NO_X emissions from these units. Although not specified by the State, good combustion practices may include, but are not limited to, proper burner maintenance, proper burner alignment, proper fuel to air distribution and mixing, routine inspection, and preventive maintenance.

The State conducted a four-factor analysis for several units at Westvaco, relying on information submitted by the facility (attached as appendix E to the Wyoming 2022 SIP submission). In its evaluation of further NO_X emissions controls, the State considered SNCR and SCR for the two coal-fired boilers and LNB for the gas-fired calciners and lime kiln (table 12). Trona injection prior to ESP was evaluated for further SO_2 emissions control on the coal-fired boilers; no further SO_2 emissions controls were evaluated for the gas-fired calciners and lime kiln (table 13). For further PM emissions control, the State evaluated FF and wet ESP on the two coal-fired boilers, wet ESP on one of the calciners (NS3), and ESP and wet ESP on the other calciner (MONO5) and lime kiln (table 14).

TABLE 12—SUMMARY OF WESTVACO NO_X COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
NS–1A (coal-fired boiler)	SNCR/SCR	397/893	$3,079,590/$5,395,079	$7,757/$6,039
NS–1B (coal-fired boiler)	SNCR/SCR	414/933	3,014,532/5,379,506	7,273/5,769
NS3 (gas-fired calciner)	LNB	36.6	530,569	14,490
MONO5 (gas-fired calciner)	LNB	28.3	395,507	14,000
SM–1 (gas-fired kiln)	LNB	44.1	323,875	7,339

TABLE 13—SUMMARY OF WESTVACO SO_2 COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
NS–1A (coal-fired boiler)	Trona injection prior to ESP	205.6	$2,674,635	$13,007
NS–1B (coal-fired boiler)	Trona injection prior to ESP	201.9	2,674,634	13,249

TABLE 14—SUMMARY OF WESTVACO PM COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
NS–1A (coal-fired boiler)	Fabric filter/Wet ESP	[1] 242.2/242.2	$3,466,804/$3,064,278	$14,314/$12,652
NS–1B (coal-fired boiler)	Fabric filter/Wet ESP	[1] 33.4/33.4	3,445,297/3,026,284	103,079/90,542
NS3 (gas-fired calciner)	Wet ESP	267.2	2,196,068	8,219
MONO5 (gas-fired calciner)	ESP/Wet ESP	145/145	1,203,249/1,330,528	8,296/9,174
SM–1 (gas-fired kiln)	ESP/Wet ESP	15.7/15.7	911,823/1,114,931	58,004/70,924

[1] The PM emissions reductions for NS–1A and NS–1B do not match due to a difference in the 2014 stack test data and heat input.

The State estimated the time necessary to achieve compliance using the controls it evaluated to be at least four years.

The State identified several energy and non-air environmental impacts associated with potential controls at Westvaco. For installation and operation of SNCR on the coal-fired boilers, the State noted storage of additional reagent chemicals onsite, ammonia slip, generation and disposal of wastewater, and generation of emissions due to additional fuel combustion to overcome the energy penalty associated with SNCR. For installation and operation of SCR on the coal-fired boilers, the State identified impacts related to the transport, handling, and use of aqueous ammonia, replacement and disposal of spent catalyst, and adverse air impacts due to ammonia slip; possible formation of a visible plume; oxidation of carbon monoxide to carbon dioxide; and oxidation of SO_2 to sulfur trioxide, with subsequent formation of sulfuric acid mist due to ambient or stack moisture. The State observed that running a wet ESP would require additional electricity and would lead to the generation and disposal of solid waste and wastewater, while replacement of the ESP with a FF would require additional electricity and disposal of the filter bags as waste upon replacement.

The State considered the remaining useful life of the emission units at Westvaco to be 20 years or more.

Finally, Wyoming described the Westvaco permitted NO_X, SO_2, and PM

emissions limits [83] for the boilers, calciners, and lime kiln in addition to emissions trends for these units over five years (2016–2020). For the boilers, the figures show consistent declines in NO_X emissions (from approximately 900 tons/year to approximately 600 tons/year), SO_2 emissions (from approximately 1,300 tons/year to approximately 550 tons/year), and PM emissions (from approximately 100 tons/year to almost 0 tons/year). For the calciners, NO_X emissions remained constant (50–100 tons/year) and PM emissions slightly declined (from approximately 230 tons/year to 220 tons/year). PM emissions for the lime kiln remained consistent (approximately 20 tons/year), while NO_X emissions increased slightly (from approximately 50 tons/year to approximately 75 tons/year). The State notes that permit conditions were renewed in 2021 and it does not expect emissions at Westvaco to increase before the third planning period.

After considering the four factors, historical emissions data, and current control technologies, Wyoming determined that no additional controls are necessary at Westvaco in the second planning period for regional haze. The State concluded that further controls will be evaluated in the third planning period.

f. Mountain Cement Company—Laramie Portland Cement [84]

Mountain Cement Company's Laramie Portland Cement plant is located in Laramie, Wyoming and consists of one long-dry process kiln (Kiln 1) and one long-dry 2-stage preheater kiln (Kiln 2). Together, the kilns are permitted to produce 900,000 tons of cement annually, with Kilns 1 and 2 capable of producing 254,000 tons/year of clinker and 547,500 tons/year of clinker, respectively. Emissions from Laramie Portland Cement may affect the visibility in five Class I areas in Colorado (table 32).

Table 15 describes the installed NO_X, SO_2, and PM emissions controls at Laramie Portland Cement.

TABLE 15—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT LARAMIE PORTLAND CEMENT

Unit	SO_2 controls	NO_X controls	PM controls
Kiln 1	Inherent dry scrubbing	Good combustion practice	Baghouse.
Kiln 2	Inherent dry scrubbing	Good combustion practice/2-stage preheater.	Baghouse.

Wyoming did not evaluate further SO_2 or PM emissions controls based on historical decreasing emissions trends, PM emissions limits for both kilns based on CAA maximum achievable control technology (MACT) standards, and the use of dust collectors/baghouses that constitute BACT for PM at all point sources at the facility.[85]

Relying on an evaluation submitted by the facility (attached as appendix L to the Wyoming 2022 SIP submission), the State conducted a four-factor analysis for NO_X emissions control and evaluated SNCR as a technically feasible option (table 16).

TABLE 16—SUMMARY OF LARAMIE PORTLAND CEMENT PLANT KILNS 1–2 * NO_X COST ANALYSIS ASSOCIATED WITH SNCR

Level of control (% emissions reductions)	Total capital investment ($)	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
10	$5,833,000	933	$17,639,442	$18,900
15		1,005.6		17,540
20		1,077.9		16,360
25		1,150.2		15,340

* Figures are for both kilns combined.

The State estimated the time necessary to achieve compliance using SNCR to be a minimum of 18 months for design, procurement, build, and installation, plus an additional 12 months for staging the installation process across both kilns.

The State identified the following energy and non-air environmental impacts associated with the installation and operation of SNCR: increased electrical energy to operate the SNCR system; possible byproducts from unreacted ammonia, including ammonium sulfate, ammonium bisulfite, and ammonium chloride; and ammonia slip, which can reduce visibility. In addition, the State noted that ammonia and salt absorption into the cement kiln dust (a byproduct) could also make the cement kiln dust unsellable, resulting in an economic penalty.

The State estimated the remaining useful life of Kilns 1 and 2 to be longer than the projected lifetime of the pollution control technology (SNCR) of 20 years, which is the capital cost recovery period of the controls.[86]

The State noted that NO_X emissions at Kilns 1 and 2 consistently decreased between 2016 and 2020 and that permitted emissions are not expected to change. It also pointed out that Kiln 2 NO_X emissions, in particular, have consistently fallen under the allowable emission limit. Based on consideration of the four factors, historical emissions data, and current control technologies, Wyoming determined that no additional controls at Laramie Portland Cement are

[83] Wyoming Permit Number 3–1–132. The Wyoming 2022 SIP submission at 151 appears to erroneously refer to this permit as Wyoming Permit Number 3–2–132.

[84] This facility is addressed at pages 156–60 and appendix L of the Wyoming 2022 SIP submission.

[85] Wyoming 2022 SIP submission, appendix L.

[86] According to Laramie Portland Cement's cost analyses found in appendix L of Wyoming's 2022 SIP submission, the facility used an amortization period of 10 years to evaluate SNCR on Kilns 1 and 2.

necessary to make reasonable progress in the regional haze second implementation period. It stated that further controls will be evaluated in the third implementation period.

g. PacifiCorp—Wyodak Power Plant [87]

PacifiCorp's Wyodak Power Plant (Wyodak) is located in Campbell County, Wyoming and includes one coal-fired boiler burning sub-bituminous coal, with a net generating capacity of 335 MW. Emissions from Wyodak may affect the visibility in 11 Class I areas in Colorado, North Dakota, South Dakota, and Wyoming (table 32).

Neither the State nor PacifiCorp conducted a four-factor analysis for Wyodak. In response to the State's initial request to submit a four-factor analysis,[88] PacifiCorp explained that it was participating in ongoing confidential settlement discussions regarding the first planning period requirements for Wyodak, which it argued will influence whether and how a four-factor analysis will be completed. PacifiCorp requested that the State delay submittal of a second planning period analysis until after settlement discussions concluded. Wyoming referred to ongoing litigation as the reason not to evaluate this source and stated that a four-factor analysis will occur in a future implementation period, if needed.

h. TATA Chemicals—Green River Works [89]

TATA Chemicals' Green River Works facility is a trona ore mine and soda ash production plant located in Sweetwater County, Wyoming. Green River Works has two existing subbituminous coal-fired stoker boilers, C Boiler and D Boiler, with a firing rate of 534 MMBtu/hour and 880 MMBtu/hour, respectively. In addition, Green River Works has seven natural gas-fired calciners: five smaller calciners rated at 65 tons of soda ash/hour (50 MMBtu/hour) and two larger calciners, Calciner 1 and Calciner 2, rated at 145 tons of soda ash/hour (200 MMBtu/hour). Relying on information submitted by the facility (attached as appendix G to Wyoming's 2022 SIP submission), the State conducted a four-factor analysis for the two coal-fired boilers and the two large natural gas-fired calciners, as these units have annual actual emissions of visibility-impairing pollutants in excess of 100 tons/year. The State asserts that the remaining emission units at Green River Works are small and contribute a fraction of the facility's visibility-impairing emissions; no four-factor analysis was performed for those units. Emissions from Green River Works may affect the visibility in 19 Class I areas in Wyoming (table 32).

Table 17 describes the installed NO_X, SO_2, and PM emissions controls at Green River Works.

TABLE 17—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT GREEN RIVER WORKS

Unit	NO_X controls	SO_2 controls	PM controls
C Boiler	LNB + OFA	DSI	ESPs.
D Boiler	LNB + OFA	DSI	ESPs.
Calciner 1			ESPs.
Calciner 2			ESPs.

In its evaluation of further NO_X emissions controls, the State evaluated SNCR and SCR on the two coal-fired boilers and LNB and SCR on the two calciners (table 18). It evaluated wet and dry flue gas desulfurization (FGD) for further SO_2 emissions control on the coal-fired boilers (table 19). The State evaluated wet and dry ESP for further PM emissions control on the two calciners (table 20).

TABLE 18—SUMMARY OF GREEN RIVER WORKS NO_X COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year) [1]	Average cost effectiveness [1] ($/ton)
C Boiler	SNCR/SCR	98/295	$885,174/$3,701,998	$9,000/$12,547
D Boiler	SNCR/SCR	150/449	$1,195,034/$5,525,216	$7,992/$12,317
Calciner 1	LNB/SCR	48.3/56.4	$269,500/$548,100	$5,580/$9,720
Calciner 2	LNB/SCR	28.9/38.3	$269,500/$540,900	$9,310/$14,140

[1] The total annual cost and average cost effectiveness figures for the C and D Boilers in Wyoming's 2022 SIP submission on page 164 conflict with the figures presented in appendix G (pages G–36 and G–57, among others). The figures from page 164 are presented in table 18.

TABLE 19—SUMMARY OF GREEN RIVER WORKS SO_2 COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
C Boiler	Dry FGD/Wet FGD	855.3/894.4	$5,407,000/$6,092,600	$6,320/$6,810
D Boiler	Dry FGD/Wet FGD	1,392.0/1,456.7	$8,889,200/$10,023,100	$6,390/$6,880

[87] This facility is addressed at page 160 and appendix C of the Wyoming 2022 SIP submission.

[88] Wyoming 2022 SIP submission, appendix C.

[89] This facility is addressed at pages 161–67 and appendix G of the Wyoming 2022 SIP submission.

TABLE 20—SUMMARY OF GREEN RIVER WORKS PM COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
Calciner 1	Wet ESP/Dry ESP	67.8/57.9	$1,202,900/$976,900	$17,700/$16,900
Calciner 2	Wet ESP/Dry ESP	69.3/67.7	$1,202,900/$976,900	$17,400/$14,400

For the two boilers, the State estimated the time necessary to achieve compliance using SCR to be 28 months and using SNCR to be 24 months. For the two calciners, the State estimated that installation of LNB or SCR would take 28 months, and installation of wet or dry ESP would take 18 months. It estimated the time needed to install wet and dry FGD on the two boilers to be 36 months. These timelines do not include time associated with regulation development or SIP approval.

The State identified several energy and non-air environmental impacts associated with the installation and operation of controls at Green River Works. For SCR or SNCR, the State noted the storage of additional reagent chemicals onsite, ammonia slip, increased electric power requirements, and formation of ammonium salt, which may result in additional fine particulate matter emissions. As to wet or dry FGD, the State identified steam output capacity penalty or reduction of more than 1%, along with a boiler efficiency impact of approximately 1.5%, combined with additional electricity and water demand and liquid and solid waste disposal requirements. In addition, the State asserted that dry FGD systems (for SO_2 control) may increase PM emissions from the boiler, while the operation of a wet FGD system, and potentially a dry FGD system, would result in visibility impacts by causing a visible plume from the stack.

In considering remaining useful life, the State explained that both the emission units and the new equipment are expected to last 20 years or more.

Finally, Wyoming provided the emission trends for the C and D Boilers over five years (2016–2020).[90] The figures show that C Boiler NO_X emissions remained steady (at approximately 400 tons/year), while SO_2 emissions consistently declined (from approximately 1,800 tons/year to approximately 700 tons/year). For the D Boiler, NO_X emissions also remained steady (at approximately 600 tons/year), while SO_2 emissions consistently declined (from approximately 3,500 tons/year to approximately 1,000 tons/year). Wyoming stated that NO_X and SO_2 emissions from the C and D Boilers are not expected to significantly increase between 2020 and the third planning period.

Ultimately, based on its consideration of the four factors, historical emissions data, and current control technologies, Wyoming determined that no additional controls are necessary at Green River Works in the second planning period for regional haze. The State concluded that further controls will be evaluated in the third planning period.

i. Contango Resources, Inc.—Elk Basin Gas Plant [91]

Contango Resources, Inc.'s Elk Basin Gas Plant in Park County, Wyoming is a sour natural gas processing and liquids extraction plant designed to process 10 million standard cubic feet per day of sour gas into propane, butane, natural gas, gasoline, and elemental sulfur. The Elk Basin Gas Plant has nine natural gas-fired compressor engines and a natural gas-fired incinerator, with each having a design heat input rate of 358.5 MMBtu/hour. Emissions from the Elk Basin Gas Plant may affect the visibility in two Class I areas in Wyoming (table 32).

Relying on information submitted by the facility (attached as appendix H to the Wyoming 2022 SIP submission), the State evaluated low emission combustion (LEC) for further NO_X emissions control on the nine compressor engines (table 21). For further SO_2 emissions control on the incinerator, it evaluated one option of optimization of the existing 2-stage Claus Plant, and another option of adding a third stage to the Claus Plant and adding a tail gas treating unit (table 22). The State did not evaluate further PM emissions controls on any units.

TABLE 21—SUMMARY OF ELK BASIN GAS PLANT NO_X COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Average cost effectiveness ($/ton)
Nine (9) compressor engines (EC1–EC9)	LEC	1,793.55	$1,500–$2,200

TABLE 22—SUMMARY OF ELK BASIN GAS PLANT SO_2 COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Average cost effectiveness ($/ton)
Incinerator (INC–1)	Optimizing 2-stage Claus Plant	50	$24,000
	Adding a 3rd stage to the Claus Plant and a tail gas treating unit	80	200,000

The State estimated the time necessary to achieve compliance using LEC NO_X emissions controls on the nine compressor engines to be three to five years after the SIP is approved. For SO_2 control on the incinerator, it estimated that optimizing the 2-stage Claus Plant would take two to five years, while adding a third stage to the Claus Plant

[90] Wyoming 2022 SIP submission at 166–67.

[91] This facility is addressed at pages 168–72 and appendix H of the Wyoming 2022 SIP submission.

together with adding a tail gas treating unit would take three to five years after the SIP is approved.

The State identified the following energy and non-air environmental impacts associated with the installation and operation of LEC controls on the nine compressor engines: an annual electricity cost increase of approximately $11,500 per 1,200 horsepower engine and a potential decrease in PM emissions due to more ideal combustion. Likewise, the State expected that optimizing the 2-stage Claus Plant and adding a third stage to the Claus Plant would both result in increased use of electricity due to added instrumentation. It noted that the amount of sulphur catalyst requiring landfill disposal is expected to decrease with the optimization of the existing 2-stage Claus Plant, while adding a third stage to the Claus Plant is expected to increase sulphur catalyst disposal needs.

In evaluating remaining useful life, Wyoming stated that the LEC control units are expected to last 20 to 25 years. Both control options for the tail gas incinerator are expected to last 30 years.

The State also provided the permitted SO_2 emissions limits for the incinerator [92] and emissions trends for both the incinerator and nine compressor engines over five years (2016–2020). The figures show that the incinerator's SO_2 emissions consistently dropped (from approximately 500 tons/year to approximately 350 tons/year) and are below the permitted limit of 3,044.1 tons/year. According to the State, the SO_2 emissions from the incinerator are expected to continue to decrease. The figures show consistent declines in NO_X emissions between 2016–2020 for all compressor engines except EC8, which showed a slight increase. Overall, Wyoming concluded that NO_X and SO_2 emissions at the Elk Basin Gas Plant have consistently declined and are not expected to change in a way that significantly increases emissions.

Ultimately, after considering the four factors, emissions trends, and permit conditions, Wyoming determined that the Elk Basin Gas Plant may warrant further analysis of emission controls. The State remarked that it would submit more detailed analyses in the regional haze progress report due January 31, 2025, to determine if any new controls are reasonable for this facility and should be scheduled for implementation.

j. Genesis Alkali—Granger Soda Ash Facility [93]

Genesis Alkali's Granger Soda Ash facility (Granger) is a trona ore mine and soda ash production plant located in Sweetwater County, Wyoming. Granger has two existing subbituminous coal-fired stoker boilers, Unit UIN–14 and Unit UIN–15, with each having a design heat input rate of 358.5 MMBtu/hour. The remaining emission units at Granger reported 2014 actual emissions of less than 5 tons/year each of SO_2, NO_X, and PM_{10}. Emissions from Granger may affect the visibility in two Class I areas in Wyoming (table 32).

Table 23 describes the installed NO_X, SO_2, and PM emissions controls at Granger.

TABLE 23—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT GRANGER

Unit	SO_2 controls	NO_X controls	PM controls
UIN–14 (coal-fired boiler)	Wet scrubber	OFA	ESP.
UIN–15 (coal-fired boiler)	Wet scrubber	OFA	ESP.

Relying on information submitted by the facility (attached as appendix I to the Wyoming 2022 SIP submission), the State conducted a four-factor analysis for further emissions controls on the two coal-fired boilers. It evaluated SNCR and SCR for further NO_X control (table 24), trona injection prior to ESP for further SO_2 control (table 25), and wet ESP and FF for further PM control (table 26).

TABLE 24—SUMMARY OF GRANGER NO_X COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
UIN–14 (coal-fired boiler)	SNCR/SCR	271/610	$1,450,702/$3,175,904	$5,347/$5,202
UIN–15 (coal-fired boiler)	SNCR/SCR	233/524	1,422,667/3,175,825	6,111/6,063

TABLE 25—SUMMARY OF GRANGER SO_2 COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
UIN–14 (coal-fired boiler)	Trona injection prior to ESP	104.5	$2,745,234	$26,283
UIN–15 (coal-fired boiler)	Trona injection prior to ESP	70.4	2,745,202	38,994

[92] Wyoming Permit Number 0022339.

[93] This facility is addressed at pages 172–77 and appendix I of the Wyoming 2022 SIP submission.

TABLE 26—SUMMARY OF GRANGER PM COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
UIN–14 (coal-fired boiler)	Wet ESP/FF	8.9/8.9	$1,765,111/$1,945,510	$198,774/$219,089
UIN–15 (coal-fired boiler)	Wet ESP/FF	120/120	1,732,090/1,933,758	14,434/16,115

The State estimated the time necessary to achieve compliance to be at least four years. The State also identified several energy and non-air environmental impacts associated with the installation and operation of the controls it evaluated. For SNCR, it noted the storage of additional reagent chemicals onsite, ammonia slip, generation and disposal of wastewater, and generation of further emissions due to additional fuel combustion to overcome the energy penalty associated with SNCR. As to SCR, the State identified the transport, handling, and use of aqueous ammonia; replacement and disposal of spent catalyst; and adverse air impacts due to ammonia slip, possible formation of a visible plume, oxidation of carbon monoxide to carbon dioxide, and oxidation of SO_2 to sulfur trioxide with subsequent formation of sulfuric acid mist due to ambient or stack moisture. The State remarked that additional electricity would be needed for operation of a wet ESP, which would also require generation and disposal of solid waste and wastewater. Replacement of the ESP with a FF would require additional electricity and disposal of the filter bags as waste upon replacement, while trona injection prior to electrostatic precipitation would generate solid waste and require additional electricity. For remaining useful life, the State estimated that the emission units are expected to last 20 years or more.

Finally, Wyoming noted that Granger has shut down several sources since 2014 and has made voluntary emissions reductions as part of the Granger Optimization Project. That project triggered prevention of significant deterioration (PSD) review for NO_X, SO_2, and PM_{10} emissions and included an evaluation of the facility's emissions impacts at nearby Class I areas, which the State found to be acceptable.

The State also provided the permitted NO_X, SO_2, and PM emission limits [94] and emissions trends for the boilers over five years (2016–2020). The figures show that boiler UIN–14 NO_X emissions dropped (from approximately 630 tons/year to approximately 120 tons/year), as did SO_2 emissions (from approximately 180 tons/year to approximately 20 tons/year) and PM emissions (from approximately 95 tons/year to approximately 10 tons/year). Emissions also declined for boiler UIN–15 for NO_X (from approximately 675 tons/year to approximately 150 tons/year), SO_2 (from approximately 150 tons/year to approximately 10 tons/year), and PM (from approximately 40 tons/year to approximately 10 tons/year). Wyoming concluded that NO_X, SO_2, and PM emissions at both boilers decreased or remained consistent between 2016 and 2020, remained under their permitted emission limits, and are not expected to change for the next permit renewal.

Ultimately, Wyoming determined, based on the four factors, emissions trends, and permit conditions, that no additional controls are necessary at Granger to make reasonable progress in the second planning period for regional haze. The State concluded that further controls will be evaluated in the third planning period.

k. Burlington Resources—Lost Cabin Gas Plant [95]

Burlington Resources' Lost Cabin Gas Plant is a natural gas sweeting plant located in Fremont County, Wyoming. The plant has two natural gas processing trains, Trains 2 and 3; each processing train consists of a solvent absorption section to separate carbon dioxide (CO_2), hydrogen sulfide (H_2S), and carbonyl sulfide (COS) from the natural gas.[96] Emissions from the Lost Cabin Gas Plant may affect the visibility in three Class I areas in Wyoming (table 32).

Relying on information submitted by the facility (attached as appendix J to the Wyoming 2022 SIP submission), the State evaluated wet scrubbers for SO_2 emissions control on Trains 2 and 3 (table 27).[97] It noted that the Lost Cabin Gas Plant is currently controlling SO_2 emissions by continued emphasis on minimization of flaring events through the combination of operational controls, equipment upgrades, and facility design changes.[98] Wyoming did not conduct a four-factor analysis for NO_X and PM emissions control measures, reasoning that NO_X and PM account for a small fraction of total emissions from the facility.[99]

TABLE 27—SUMMARY OF LOST CABIN GAS PLANT SO_2 COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year) [1]	Average cost effectiveness ($/ton) [2]
Train 2	Wet Scrubber	174.9	$1,442,233	$7,710

[94] Wyoming Permit Number 0021849. Emission limits for each boiler, UIN–14 and UIN–15, are 985.5 tons/year for NO_X, 284.7 tons/year for SO_2, and 118.3 tons/year for PM.

[95] This facility is addressed at pages 178–82 and appendix J of the Wyoming 2022 SIP submission.

[96] Train 1 was decommissioned and decoupled from Train 2. Wyoming 2022 SIP submission at 178.

[97] Flaring emissions were not included in the SO_2 control analysis because SO_2 emissions from flaring are already well controlled, according to the State, and decreased from 2,289 tons/year to 1,075 tons/year between 2014 and 2018.

[98] Significant changes to the facility design were implemented to reduce flaring and SO_2 emissions, including addition of a sulfur tank vapor thermal oxidized in 2017, improved tail gas unit cooling on Train 2, addition of a flare H_2S analyzer on Train 2 (Train 3 pending) to troubleshoot potential sour vent and drain valve leaks, and addition of fuel gas assist and improved programming logic for sour flare events on both Trains 2 and 3. Wyoming 2022 SIP submission at 178–79.

[99] According to Wyoming, total NO_X and PM_{10} emissions for the Lost Cabin Gas Plant are 124.9 tons/year and 12.0 tons/year, respectively. Wyoming 2022 SIP submission at 178.

TABLE 27—SUMMARY OF LOST CABIN GAS PLANT SO_2 COST ANALYSIS—Continued

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year) [1]	Average cost effectiveness ($/ton) [2]
Train 3	Wet Scrubber	304.2	2,438,411	7,470

[1] Cost figures reflect those on page 179 and appendix J of the Wyoming 2022 SIP submission. The cost figures found in table 11–34 on page 180 of the Wyoming 2022 SIP submission ($1,348,694 for Train 2 and $2,272,044 for Train 3) conflict with these. These conflicting numbers are addressed in section IV.C.2.b.ii. of this document.

[2] Cost figures reflect those on page 180 of the Wyoming 2022 SIP submission, which conflict with the cost figures found in appendix J ($8,250 for Train 2 and $8,010 for Train 3). These conflicting numbers are addressed in section IV.C.2.b.ii. of this document.

The State estimated the time necessary to achieve compliance using wet scrubbers to be 30 months, but potentially up to 42 months.

The State identified the following energy and non-air environmental impacts associated with the installation and operation of wet scrubbers on Trains 2 and 3: an energy penalty from operation of the scrubber systems; significant water usage; disposal of salt-laden spent scrubber liquor; and the possibility of highly visible secondary particulate formation.

The State estimated the remaining useful life of the wet scrubbers to be 15 years. Additionally, Wyoming noted that actual SO_2 emissions (269 tons/year from Train 2 and 338.05 tons/year from Train 3 in 2020) have consistently remained under allowable emission limits (503.7 tons/year for Train 2 and 1,366.6 tons/year for Train 3). The State also provided SO_2 emissions trends for Trains 2 and 3 over five years (2016–2020). The figures show that SO_2 emissions from Train 2 consistently increased (from approximately 125 tons/year to approximately 275 tons/year), while SO_2 emissions from Train 3 trended upward between 2016 and the end of 2018 (from approximately 280 tons/year to approximately 340 tons/year) before dropping to 0 tons/year in 2019 and 2020.[100] The State also noted an overall reduction in actual SO_2 emissions from 2014 to 2018 of 1,553.6 tons/year (which represents total SO_2 actual emissions, including those from flaring), as well as a permitted allowable SO_2 emission reduction of 389.6 tons/year.

Wyoming concluded that installing wet scrubbers for SO_2 emissions control on Trains 2 and 3, at a cost of over $7,000/ton removed, is cost prohibitive. In addition, the State noted that it expects total SO_2 emissions to decrease year-over-year as production continues to decline at an approximate rate of 4 to 5 percent, with overall SO_2 emissions declining at 3 to 5 percent per year during normal operation.

Ultimately, Wyoming determined, after consideration of the four factors and emissions trends, not to propose any changes to current SO_2 emissions controls at the Lost Cabin Gas Plant. The State concluded that further controls will be evaluated in the third planning period.

l. Dyno Nobel Inc.—Cheyenne Fertilizer Facility [101]

Dyno Nobel Inc.'s Cheyenne Fertilizer Facility is a chemical manufacturing plant located in Cheyenne, Wyoming that produces ammonia, nitric acid, urea/diesel exhaust fluid, carbon dioxide, low density ammonium nitrate, and other related products. Relying on information submitted by the facility (attached as appendix K to the Wyoming 2022 SIP submission), the State conducted a four-factor analysis for several emission units: two natural gas-fired Cooper reciprocating compressor engines (ENG004 and ENG005), a natural gas-fired primary reformer (CKD001), and three cooling towers (CTW001, CTW002, CTW003). Together, these units account for 88.6% of the total NO_X, SO_2, and PM_{10} emissions from the facility. Emissions from the Cheyenne Fertilizer Facility may affect the visibility in two Class I areas in Colorado (table 32).

Table 28 describes the installed NO_X, SO_2, and PM emissions controls at the Cheyenne Fertilizer Facility.

TABLE 28—INSTALLED NO_X, SO_2, AND PM EMISSIONS CONTROLS AT THE CHEYENNE FERTILIZER FACILITY

Unit	SO_2 controls [1]	NO_X controls	PM controls
ENG004 (engine)		Lean burn combustion.	
ENG005 (engine)		Lean burn combustion.	
CKD001 (reformer)		LNB.	
CTW001 (cooling tower)			Legacy mist eliminator.
CTW002 (cooling tower)			Mist eliminator.[2]
CTW003 (cooling tower)			Legacy mist eliminator.

[1] All emission units are natural gas-fired.

[2] Designed for 0.001% drift.

For further NO_X emissions control, the State evaluated LEC and SCR on the two engines and SCR on the reformer (table 29). The State evaluated upgraded mist eliminators for further PM emissions control on two of the cooling towers (CTW001 and CTW003) (table 30). No additional SO_2 controls were evaluated for any of the natural gas-fired units.

[100] According to the State, in December 2018, Train 3 had a backfire and was not operating in 2019 and 2020. Train 3 was rebuilt and restarted in early 2021; the State expects consistent emissions trends following the rebuild. Wyoming 2022 SIP submission at 181.

[101] This facility is addressed at pages 182–91 and appendix K of the Wyoming 2022 SIP submission.

TABLE 29—SUMMARY OF THE CHEYENNE FERTILIZER FACILITY NO_X COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
ENG004, ENG005 (engines)	LEC	229/engine	$244,100/engine	$1,067/engine
	SCR	78 [1]	418,700	5,354.
CKD001 (reformer)	SCR	34	716,300	21,030.

[1] Emission reductions beyond LEC.

TABLE 30—SUMMARY OF CHEYENNE FERTILIZER FACILITY PM COST ANALYSIS

Unit	Control technology	Emission reduction (tons/year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
CTW001 (cooling tower)	Upgraded mist eliminators	15.5	$16,300	$1,056
CTW003 (cooling tower)	Upgraded mist eliminators	2.4	5,740	2,368

The State estimated the time necessary to achieve compliance using LEC retrofits on the engines to be one year. However, the State asserted that the retrofits need to be completed during the next scheduled turnarounds, which are four years apart for each engine and are scheduled for 2026 and 2030. The State estimated the time necessary to achieve compliance using SCR to be one to two years but noted it would require a total shutdown that could not occur until 2030 or later. The State estimated the time necessary to achieve compliance using the mist eliminator upgrades on the cooling towers to be one to five years for CTW001 and six or more years for CTW003 because the upgrades must occur during a scheduled turnaround/shutdown.

The State identified several energy and non-air environmental impacts associated with the installation and operation of potential controls. For SCR on the engines and reformer, the State noted the need to retrofit both the engines and reformer into the existing structures using extensive ductwork, which may lead to a pressure drop corresponding to a slight decrease in efficiency. Wyoming asserted this could result in greater fuel and energy consumption as well as upsets due to backpressure effects, which could lead to forced shutdowns, safety incidents/injuries, excess emissions, and wasted product. The LEC retrofit on the engines would require a modest increase to heat load, while the mist eliminator upgrades for the cooling towers were not expected to result in any significant energy and non-air quality environmental impacts. In its evaluation of remaining useful life, the State estimated 25 years for SCR and LEC and 30 years for the mist eliminator upgrades.

Wyoming also provided the Cheyenne Fertilizer Facility permitted NO_X emission limits [102] for the engines and reformer, in addition to NO_X emissions trends for these units over five years (2016–2020). NO_X emissions for the engines initially declined (from approximately 1,500 tons/year in 2016 to approximately 500 tons/year in 2019) before increasing in 2020 (to approximately 1,500 tons/year). According to the State, a stack test performed in April 2021 indicated that NO_X emissions from the engines were 700 tons/year, representing a decrease of over 50% in emissions from the 2016–2020 time frame.[103] In addition, the average NO_X emission rate for both engines was 46.9 lb/hour in 2021, below their allowable emission rate of 170.61 lb/hour, which has remained the same since 2012 and the State asserts is unlikely to change when a new permit is issued. The NO_X emissions trends for the reformer over five years (2016–2020) indicate a decline from approximately 120 tons/year in 2016 to approximately 35 tons/year in 2020. In addition, the average NO_X emission rates for the reformer between 2016–2020 varied between 4–10 lb/hour, below the permitted limit of 28.2 lb/hour, which has also remained the same since 2012 and the State believes is unlikely to change when a new permit is issued. The State also provided PM emissions trends for all three cooling towers (CTW001, CTW002, and CTW003) over five years (2016–2020), which show a decline in PM emissions (from approximately 400 tons/year to approximately 25 tons/year across all three cooling towers combined).

Wyoming concluded that, given emissions trends and allowable vs. actual emission rates, there is no evidence that NO_X emissions from the engines and reformer will increase or that changes to the allowable emissions will be necessary, as NO_X emissions are expected to remain consistent or decrease between 2020 and 2028. The State also determined that the total capital investment required to install mist eliminators on CTW001 and CTW003 is not justified given what it considered to be a ''minute'' amount of potential PM emissions reductions.

Overall, after considering the four factors and emissions trends, Wyoming determined that no additional emission controls are necessary at the Cheyenne Fertilizer Facility to make reasonable progress in the second planning period for regional haze. At the same time, the State also concluded that this facility may warrant further analysis of emission controls to reach reasonable progress, which it stated would be detailed in the progress report due January 31, 2025.

m. Summary of Wyoming's Reasons for Concluding That No Additional Emission Reduction Measures Are Necessary To Make Reasonable Progress

After evaluating the twelve sources it had selected for consideration of additional controls, Wyoming concluded that no new controls on those sources are warranted during the regional haze second planning period.[104] Chapter 13 of Wyoming's 2022 SIP submission summarizes the State's reasons for not requiring any additional emission reduction measures

[102] Wyoming Title V Permit Number 0022581.

[103] According to the State, the emissions measurement methodology was consistent between 2016–2020 but changed to an alternate, more accurate stack test methodology in 2021. Wyoming 2022 SIP submission at 188.

[104] Wyoming 2022 SIP submission at 206.

to make reasonable progress toward the national visibility goal.

First, the State explained how it considered costs of compliance. Wyoming did not rely on a cost-effectiveness threshold to determine whether additional emission reduction measures are reasonable. It asserted that the cost of additional controls could harm the State's economy and the livelihoods of Wyoming's rural communities, particularly because coal-fired units and oil and gas development tend to operate in rural areas that depend on those activities for economic support. The State remarked that any additional costs could cause economic stress to energy producers that are operating in an uncertain financial climate, potentially forcing those sources out of the market prematurely. It also pointed to potential detrimental effects on grid stability and on Wyoming and out-of-state ratepayers.

Second, Wyoming highlighted historical and anticipated reductions in emissions from first implementation period measures, increasing renewable energy generation, facility shutdowns and conversions, and measures taken in other states and nationwide. It described emission reductions at Wyoming facilities since 2014, noting that NO_X emissions declined by almost 17,400 tons, SO_2 emissions declined by approximately 18,000 tons, and PM_{10} emissions declined by almost 850 tons. Wyoming expects further reductions to occur between 2020 and 2028, which it asserted will benefit all Class I areas. It pointed to expected facility retirements at Dave Johnston Units 1 and 2, which Wyoming stated has an enforceable consent decree requirement to cease coal operations by 2028; Dave Johnston Unit 3, which has an enforceable state and federal commitment to close by the end of 2027; and Naughton Units 1 and 2, which Wyoming stated are planned to retire by the end of 2025. Wyoming also cited future facility conversions at Jim Bridger Units 1 and 2, which have an enforceable conversion to natural gas by January 2024,[105] and Naughton Unit 3, which converted from coal to natural gas in 2019.

Third, the State considered the level of potential visibility improvements at issue. Wyoming stated that all seven Class I areas within the State are below the adjusted URP glidepath to attain natural conditions by 2064. It noted that potential additional controls, which would reduce NO_X by 12,300 tons and SO_2 by 10,000 tons, would not impact the projected 2028 and 2064 visibility conditions in Wyoming Class I areas. According to the State, WRAP modeling indicates that potential additional controls would have ''little to no influence'' (less than 0.1 deciview)[106] on visibility improvement in Wyoming's Class I areas. Wyoming also pointed to the impact on visibility of sources beyond its control, noting that international anthropogenic sources and natural sources such as wildfires are large contributors to visibility impairment in the State's Class I areas.

The State ultimately concluded that imposing any additional costs on Wyoming sources is unwarranted during the second implementation period. Wyoming stated that it will continue to monitor Class I area visibility, regional haze, sources of emissions, and electrical and oil and gas markets, and will reevaluate its position in the next regional haze progress report due in January 2025.

2. The EPA's Evaluation

The EPA finds that Wyoming's selection of twelve sources to evaluate through four-factor analyses, as described in section IV.C.1. of this document, was reasonable. However, as detailed in sections IV.C.2.a.-d. below, we find that Wyoming's long-term strategy does not satisfy the requirements of CAA section 169A and 40 CFR 51.308(f)(2) on four separate grounds: (1) Wyoming failed to consider the required four statutory factors to analyze control measures for some selected sources to determine what is necessary to make reasonable progress, despite determining that those sources may affect visibility at certain Class I areas; (2) Wyoming did not document the technical basis of some of its decisions and made numerous calculation and other methodological errors; (3) Wyoming unreasonably rejected emission reduction measures for some sources; and (4) Wyoming's other reasons for not requiring any emission reduction measures in its long-term strategy (*e.g.,* its reliance on alleged economic hardships, historical and future emissions reductions, and lack of visibility improvement) are not adequately supported or lack foundation in the CAA and RHR. Therefore, we are proposing to disapprove Wyoming's long-term strategy for the second implementation period under CAA section 169A and 40 CFR 51.308(f)(2). The following sections IV.C.2.a.–d. detail these separate bases for our proposed disapproval, with a focus on specific sources, units, and pollutants for illustrative purposes.

a. Failure To Perform a Four-Factor Analysis To Analyze Control Measures for Selected Sources To Determine What Is Necessary To Make Reasonable Progress

Under CAA section 169A and 40 CFR 51.308(f)(2), a state must submit a long-term strategy to make reasonable progress for Class I areas within the state and Class I areas outside the state that may be affected by the state's emissions. CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) provide that in determining the emission reduction measures necessary to make reasonable progress, the state must consider the following four factors:

- Costs of compliance;
- Time necessary for compliance;
- Energy and non-air quality environmental impacts of compliance; and
- Remaining useful life of any potentially affected sources.

In its 2022 SIP submission, Wyoming determined that twelve stationary sources should be evaluated for additional controls due to their potential effect on visibility at Class I areas within the State and outside the State. For some of these sources, we acknowledge that there are several instances where the State appropriately relied on the effectiveness of existing controls or an existing federally enforceable commitment to cease operations as a reason to forgo a four-factor analysis. However, for other sources, neither the State nor the facility determined the emission reduction measures that are necessary for reasonable progress by considering the four statutory factors—nor did they provide technical documentation or other justification to support that lack of analysis—despite the State's determination that those sources may affect visibility at Class I areas. Therefore, we find that Wyoming failed to meet the requirements under CAA section 169A and 40 CFR 51.308(f)(2)(i) to consider the four statutory factors for the sources and associated units and pollutants listed in table 31 that may affect visibility at Class I areas.

[105] The EPA has proposed to approve Wyoming's 2022 SIP submission to convert Jim Bridger Units 1–2 from coal-fired boilers to natural gas-fired boilers and establish associated NO_X and annual heat input limits. 89 FR 25200.

[106] Wyoming 2022 SIP Submission at 205.

TABLE 31—SOURCES, UNITS, AND ASSOCIATED POLLUTANTS THAT MAY AFFECT VISIBILITY AT CLASS I AREAS AND SELECTED FOR FOUR-FACTOR ANALYSIS WHERE NO FOUR-FACTOR ANALYSIS WAS PERFORMED

Source	Unit(s)	Associated pollutant(s)
Jim Bridger *(PacifiCorp)*	1, 2	NO_X, SO_2, PM
Jim Bridger *(PacifiCorp)*	3, 4	SO_2, PM
Naughton *(PacifiCorp)*	1, 2	NO_X, SO_2, PM
Naughton *(PacifiCorp)*	3	NO_X, PM
Dave Johnston *(PacifiCorp)*	1, 2	NO_X, SO_2, PM
Dave Johnston *(PacifiCorp)*	4	PM
Wyodak *(PacifiCorp)*	1	NO_X, SO_2, PM
Laramie River Station *(Basin Electric)*	1–3	PM
Laramie Portland Cement *(Mountain Cement Company)*	Kilns 1, 2	SO_2
Elk Basin Gas Plant *(Contango Resources, Inc.)*	Engines (9) and incinerator	PM
Elk Basin Gas Plant *(Contango Resources, Inc.)*	Engines (9)	SO_2
Elk Basin Gas Plant *(Contango Resources, Inc.)*	Incinerator	NO_X
Lost Cabin Gas Plant	Trains 2, 3	NO_X, PM

States are required to evaluate sources, or groups of sources, that may be affecting visibility at Class I areas within the state and outside the state. Although states have discretion under the RHR in identifying sources or groups of sources, the implementation plan must include a description of the criteria the state used to determine which sources or groups of sources it evaluated and how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.[107] Many of the sources for which Wyoming failed to conduct a four-factor analysis are among the largest contributors to visibility impairment in Class I areas, according to the State's own Q/d analysis (table 32).

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[107] CAA section 169A(b)(2)(B), CAA section 169A(g)(1), and 40 CFR 51.308(f)(2)(i). While states have discretion to select a reasonable set of sources for four-factor analysis, their selection should result in a set of pollutants and sources with the potential to meaningfully reduce contributions to visibility impairment. 2021 Clarifications Memo at 3 (noting that a source selection process that ''excludes a state's largest visibility impairing sources from selection is more likely to be unreasonable'').

Table 32—Wyoming Sources That the State Determined May Affect Class I Areas and Respective Q/d Values for Total NO_X, SO_2, and PM_{10} Emissions at Affected Class I Areas

Class I Area*	Jim Bridger	Laramie River Station	Laramie Portland Cement	Naughton	Dave Johnston	Green River Works	Westvaco	Wyodak	Elk Basin	Granger Soda Ash	Lost Cabin Gas Plant	Cheyenne Fertilizer
	Q/d Value**											
Yellowstone NP *(WY)*	54.86	-	-	42.18	41.37	18.89	16.72	17.63	-	-	-	-
Grand Teton NP *(WY)*	60.93	-	-	56.25	39.17	23.15	20.69	-	-	-	-	-
Teton WA *(WY)*	63.18	-	-	48.97	44.27	22.07	19.58	18.05	-	-	-	-
Washakie WA *(WY)*	69.91	36.10	-	48.65	53.20	22.68	20.08	20.99	16.02	-	13.06	-
North Absaroka WA *(WY)*	50.11	-	-	36.59	43.53	16.72	14.77	19.62	23.86	-	-	-
Bridger WA *(WY)*	160.00	40.90	-	78.57	57.66	43.81	38.23	18.10	-	15.49	12.76	-
Fitzpatrick WA *(WY)*	104.94	36.36	-	67.94	50.95	34.35	30.36	18.29	-	12.43	11.51	-
Eagles Nest WA *(CO)*	53.63	50.49	14.77	-	-	15.72	13.51	-	-	-	-	-
Flat Tops WA *(CO)*	70.43	-	14.04	34.15	47.65	20.64	17.66	-	-	-	-	-
Maroon Bells-	51.49	38.54	-	28.02	-	16.02	13.79	-	-	-	-	-

Snowmass WA *(CO)*												
Mount Zirkel *(CO)*	84.97	72.24	27.06	34.19	69.51	21.24	18.12	16.38	-	-	-	-
Rawah WA *(CO)*	63.52	85.89	47.04	28.55	70.05	16.92	14.52	16.41	-	-	-	11.26
Rocky Mountain NP *(CO)*	55.60	76.51	31.39	-	60.43	15.45	13.27	-	-	-	-	12.33
West Elk WA *(CO)*	45.52	-	-	-	-	14.66	12.65	-	-	-	-	-
Red Rocks Lakes WR *(MT)*	39.58	-	-	34.12	-	14.54	12.92	-	-	-	-	-
Arches NP *(UT)*	47.26	-	-	33.54	-	17.56	15.26	-	-	-	-	-
Canyonland NP *(UT)*	42.29	-	-	30.49	-	15.63	13.60	-	-	-	-	-
Badlands NP *(SD)*	-	52.05	-	-	52.92	-	-	26.20	-	-	-	-
Wind Cave NP *(SD)*	-	73.36	-	-	77.33	-	-	37.53	-	-	-	-
Craters of the Moon WA *(ID)*	-	-	-	38.43	-	14.93	13.33	-	-	-	-	-
Jarbidge WA *(NV)*	-	-	-	29.33	-	-	-	-	-	-	-	-
Capitol Reef NP *(UT)*	-	-	-	30.66	-	14.67	12.86	-	-	-	-	-
Theodore Roosevelt NP *(ND)*	-	-	-	-	-	-	-	19.26	-	-	-	-

[*] NP = National Park; WA = Wilderness Area; WR = Wildlife Refuge; WY = Wyoming; CO = Colorado; SD = South Dakota; UT = Utah; MT = Montana; NV = Nevada; ND = North Dakota.

[**] The presence of a dash ("-") indicates that the Q/d value for the source and associated Class I area is less than 10.

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Table 32 shows the Q/d value associated with each of the sources that Wyoming determined may affect visibility at Class I areas and that it selected for four-factor analysis. Q represents the total sum of NO_X, SO_2, and PM emissions, and d represents the distance (in kilometers) to the nearest Class I area. The larger the Q/d value, the greater the source's expected effect on visibility in each associated Class I area. The State's own analysis shows that Jim Bridger, Naughton, and Dave Johnston are expected to have the greatest effect on visibility at the seven Wyoming Class I areas, more than the other sources the State selected. Nevertheless, the State did not conduct a four-factor analysis on any of those sources, except for a single unit (Unit 4) at Dave Johnston. Further, as detailed in sections IV.C.2.a.i.–iii. below, none of the reasons the State provided justify not conducting four-factor analyses of sources it determined may affect visibility at Class I areas to determine what is necessary for reasonable progress, as required under CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i).

i. Reliance on Existing Controls Without Adequate Technical Documentation To Avoid Four-Factor Analysis of Sources That May Affect Visibility at Class I Areas

In declining to perform a four-factor analysis for Jim Bridger Units 1–4 and Naughton Units 1–3, the State maintained that these sources have effective NO_X and SO_2 emissions control technologies in place. PacifiCorp argued in its submittal to the State (appendix C to the SIP submission) that these sources are exempt from further analysis under the EPA's 2019 Guidance because they have effective NO_X and SO_2 emissions control technologies in place. PacifiCorp and the State specifically referred to the presence of: (1) FGD scrubber systems that meet the applicable alternative SO_2 MATS emissions limit; (2) NO_X and SO_2 emissions controls installed during the first planning period and operated year-round with an effectiveness of at least 90 percent on a pollutant-specific basis

(*e.g.,* FGD or SCR); (3) LNB/SOFA NO_X emission controls; and (4) BART-eligible units that installed and began operating controls to meet BART emission limits in the first planning period.

Without additional explanation from the State, the EPA disagrees that these sources' existing NO_X and SO_2 emissions controls exempt these sources from the requirement to consider the four statutory factors to determine whether additional controls are necessary for reasonable progress. The EPA's 2019 Guidance illustrates scenarios in which it may be reasonable for a state not to select a particular source for further analysis due to the source's existing emissions controls, including:

- For the purposes of SO_2 emissions control measures, FGD controls that meet the applicable alternative SO_2 emission limit of the 2012 MATS rule for coal-fired power plants (0.2 lb/MMBtu);
- For the purposes of SO_2 and PM emissions control measures, combustion of only pipeline natural gas;
- For the purposes of SO_2 and NO_X emissions control measures, FGD that operates year-round with an effectiveness of at least 90 percent or SCR that operates year-round with an overall effectiveness of at least 90 percent, on a pollutant-specific basis; and
- BART-eligible units that installed and began operating controls to meet BART emission limits for the first implementation period, on a pollutant-specific basis.[108]

The premise underlying the flexibility for ''effectively controlled'' sources is that performing a four-factor analysis would be futile due to the unavailability of further cost-effective emission controls.[109] Indeed, some units at Jim Bridger and Naughton may already have effective controls installed on a pollutant-specific basis (*e.g.,* Jim Bridger Units 3–4 with SCR for NO_X emissions control and Naughton Unit 3 with combustion of pipeline natural gas for SO_2 emissions control), and we agree that it would be reasonable not to perform four-factor analyses for those particular units on a pollutant-specific basis. However, it is not readily apparent, due to the State's failure to provide a sufficient technical demonstration, that additional emission controls for NO_X or SO_2 at Jim Bridger and Naughton would not be cost-effective or reasonable. For example, the State could have evaluated post-combustion NO_X controls (*e.g.,* SNCR and SCR) for Jim Bridger Units 1–2 and Naughton Units 1–3, which are currently equipped only with combustion controls. It may also be possible to achieve a lower SO_2 emissions rate at Jim Bridger Units 1–4 [110] and Naughton Units 1–2 by optimizing existing SO_2 emissions controls (*e.g.,* requiring existing scrubbers to run continuously at their maximum efficiencies), in addition to evaluating whether scrubber upgrades or tightening emission limits might be reasonable. Additionally, regardless of the State's determination that existing SO_2 emissions controls are effective, those existing controls may be necessary to make reasonable progress and therefore must be included in the SIP.[111] Wyoming's 2022 SIP submission does not address whether any of the existing SO_2 emissions controls at Jim Bridger and Naughton are necessary to make reasonable progress, and thus whether they are a part of Wyoming's long-term strategy for the second planning period. Moreover, the State did not address PM emissions controls in any context for any of these sources. Thus, the State failed to evaluate and determine the emission reduction measures that are necessary to make reasonable progress through consideration of the four statutory factors, as required by 40 CFR 51.308(f)(2), for Jim Bridger Units 1 and 2 for NO_X, SO_2, and PM; Jim Bridger Units 3 and 4 for SO_2 and PM; Naughton Units 1 and 2 for NO_X, SO_2, and PM; and Naughton Unit 3 for NO_X and PM.

Finally, for Laramie Portland Cement, the State notes that SO_2 emissions, which are currently controlled only through the inherent dry scrubbing processes of the rotary kiln itself, are consistently less than permitted allowable emissions (table 33) and have decreased by over 100 tons/year from 2014 to 2018. Wyoming appears to consider inherent dry scrubbing as an existing effective control that justifies the lack of a four-factor analysis for SO_2 controls at this source. However, because the State provides no details about the operation or emissions performance of the inherent dry scrubbing process, we cannot determine whether it is reasonable to assume that a four-factor analysis would not identify any reasonable additional controls. The State does not address, and it is not clear based on the emissions information alone, whether further SO_2 reductions would be reasonable at Laramie Portland Cement, particularly emission limit tightening. The State is also silent as to whether the facility's existing control measures are necessary for reasonable progress and are a part of the state's long-term strategy for the second planning period.

TABLE 33—LARAMIE PORTLAND CEMENT ACTUAL AND PERMITTED SO_2 LIMITS

Unit	Permitted SO_2 emissions	Actual SO_2 emissions (2018)
	tons/year	
Kiln 1	438	114.2
Kiln 2	438	13.7

ii. Reliance on Unenforceable Source Retirements To Avoid Four-Factor Analysis

Wyoming also improperly relies on unenforceable source retirements to avoid conducting a four-factor analysis for certain sources. For example, Wyoming's SIP submission refers to planned retirements at Jim Bridger Units 1–2, Naughton Units 1–2, and Dave Johnston Units 1–2, as described in PacifiCorp's 2019 IRP and in PacifiCorp's submittal to Wyoming (appendix C to the Wyoming 2022 SIP submission). However, these shutdowns are not federally enforceable. Under the CAA and the RHR, a state's long-term strategy must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress.[112] Thus, if a state is relying on source shutdowns to forgo conducting a four-factor analysis (because a shutdown is effectively the most stringent control available), the shutdown must be federally enforceable (for example, through inclusion in the SIP).[113]

As PacifiCorp conceded in its submittal to the State, it has no legal obligation to close these units and is not committing to do so in connection with the second planning period SIP.[114] Indeed, in the time since the State submitted its 2022 SIP submission, PacifiCorp has changed its planned

[108] 2019 Guidance at 24–25.

[109] 2019 Guidance at 22–23; 2021 Clarifications Memo at 5.

[110] The EPA has not yet taken final action on Wyoming's separate SIP submission to convert Jim Bridger Units 1–2 from coal-fired boilers to natural gas-fired boilers and to establish associated NO_X and annual heat input limits. The proposed action is published at 89 FR 25200.

[111] CAA section 169A and 40 CFR 51.308(f)(2). Guidance on how to determine whether existing measures are necessary for reasonable progress is contained in the 2019 Guidance at 43 and the 2021 Clarifications Memo at 8–10.

[112] See CAA section 110(a), CAA section 169A(b)(2), and 40 CFR 51.308(f)(2).

[113] Id. 2019 Guidance at 20.

[114] 2022 Wyoming SIP submission, appendix C at C–7, C–10, C–14.

retirement of Naughton Units 1–2, which is now slated for 2036 despite PacifiCorp's previous statements that the CCR rule necessitated a 2025 closure. Similarly, PacifiCorp has changed its retirement of Dave Johnston Units 1–2 [115] (now planned for 2028 instead of 2027) and Jim Bridger Units 1–2 (now planned for 2037 instead of 2023 and 2028, respectively).[116] For Naughton specifically, we also disagree with the State's reliance on the planned unenforceable retirements of Units 1 and 2 to calculate a revised Q/d value using only Unit 3, and then choosing to exempt the entire source from a four-factor analysis. These shifting plans underscore the importance of shutdowns being federally enforceable to justify excluding a source from conducting a four-factor analysis given that the SIP needs to meet the requirements of the CAA.

Because Wyoming has not demonstrated that these planned retirements are federally enforceable as required under the CAA and RHR, we find that the State unreasonably failed to consider the required four statutory factors to determine the emission reduction measures necessary to make reasonable progress for sources it determined may affect visibility at Class I areas.[117]

[115] The State asserts that PacifiCorp submitted a notice to the Wyoming Department of Environmental Quality committing to cease combusting coal at these units before December 31, 2028 to meet requirements of the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category for regulation of wastewater discharges from power plants. Wyoming 2022 SIP Submission at 227. However, Wyoming did not submit a copy of that notice or explain why it amounts to a federally enforceable shutdown.

[116] PacifiCorp Integrated Resource Plan, April 2024, at 13.

[117] In addition to facility shutdowns, Wyoming stated that it considered emissions reductions associated with increased renewable energy generation in determining what measures are necessary to make reasonable progress. 2022 Wyoming SIP Submission at 203, 206. In its submittal to the State (appendix C to the Wyoming 2022 SIP submission), PacifiCorp cited expected changes in operating parameters at Jim Bridger, Naughton, and Dave Johnston to accommodate increased renewable energy deployment as an additional reason why the State should not require a four-factor analysis for these sources. The EPA has stated that ''energy efficiency, renewable energy, and other such programs where there is a documented commitment to participate and a verifiable basis for quantifying any change in future emissions due to operational changes'' may be relevant considerations in estimating 2028 emissions for source selection purposes. 2019 Guidance at 17. However, neither PacifiCorp nor Wyoming provided a verifiable basis for quantifying any projected future changes in emissions at these (or any other) sources that may result from participation in such programs.

iii. Other Improper Rationales for Not Performing Four-Factor Analyses

The State's decision not to perform four-factor analyses for certain sources it selected is improper for several other reasons. For Jim Bridger, the State determined, without providing additional examination or explanation, that first planning period actions—specifically, the conversion to natural gas and associated NO_X and annual heat input limits [118] for Units 1–2 and the monthly and annual NO_X and SO_2 emissions limits for Units 1–4—demonstrate that no further analysis for the second planning period is necessary. As we previously acknowledged, states may appropriately rely in some instances on the effectiveness of existing controls (including first planning period controls) or an existing federally enforceable commitment to cease operations to forgo a four-factor analysis. However, the existence of these first planning period obligations alone (none of which are currently federally enforceable), without adequate technical documentation of their effectiveness, does not automatically eliminate the requirement for a four-factor analysis in the second planning period if emissions from the facility continue to affect visibility at Class I areas.[119] One of the fundamental requirements of the RHR is the requirement for periodic revisions of implementation plans at prescribed intervals in order to meet the national goal of preventing and remedying visibility impairment at Class I areas.[120] As explained in section IV.C.2.a.i. of this document, a four-factor analysis might have shown that more stringent NO_X and SO_2 controls are cost-effective and reasonable at Jim Bridger and thus necessary for reasonable progress. Ultimately, regardless of first planning period obligations and requirements, the State must continue to meet its regional haze obligations for the second planning period under the statute and the RHR.

[118] The EPA has not yet taken final action on Wyoming's 2022 SIP submission to convert Jim Bridger Units 1–2 from coal-fired boilers to natural gas-fired boilers and establish associated NO_X and annual heat input limits. Our proposed action is published at 89 FR 25200.

[119] CAA section 169A requires states to conduct both a one-time BART evaluation as well as develop and submit a long-term strategy for making reasonable progress toward meeting the national goal for federal Class I areas every 10–15 years. In addition, 40 CFR 51.308(e)(5) states that ''[a]fter a State has met the requirements for BART or implemented an emissions trading program or other alternative measure that achieves more reasonable progress than . . . BART, BART-eligible sources will be subject to the requirements of paragraphs (d) and (f) of this section.''

[120] 40 CFR 51.308(f).

Similarly, for Wyodak, the State's decision not to conduct a four-factor analysis due to ongoing first planning period litigation is not justified. In its submittal to the State, PacifiCorp asserted, without explanation, that first planning period settlement negotiations may impact whether and how a four-factor analysis for the second planning period would be conducted for Wyodak.[121] Nothing in CAA section 169A or the RHR supports excluding a source from analysis based on litigation and settlement negotiations, and the State provided no explanation for its decision to do so. Conducting a second planning period four-factor analysis for a source is not contingent on completion of first planning period obligations. Just as the presence of BART controls does not exempt sources from pursuing additional emission reduction measures that are shown to be necessary, through four-factor analysis, to make reasonable progress during the second planning period,[122] the absence of BART (or other first implementation period controls) does not exempt sources from conducting a four-factor analysis to determine what emission reduction measures are necessary to make reasonable progress for subsequent planning periods. While the anticipated approach may have been for states to submit second planning period SIP revisions that take into account finalized first planning period measures, the obligation to submit a second planning period SIP revision was not suspended for states with outstanding first planning period obligations. As required, Wyoming submitted its second planning period SIP submission, which must include a long-term strategy for making reasonable progress, pursuant to the second planning period deadline. Consequently, the EPA has a statutory obligation to review and act on a SIP submission within one year after it has been deemed complete.[123]

For the Lost Cabin Gas Plant, Wyoming did not conduct a four-factor analysis evaluating NO_X or PM emission reduction measures. As justification, the State explains that permitted NO_X and PM emissions account for only a ''small fraction'' of the total emissions from the facility.[124] However, the State did not show that these NO_X and PM emissions do not affect visibility in Class I areas. Nor did it supply information that NO_X or PM emissions are effectively

[121] Wyoming 2022 SIP submission, appendix C at C–21.

[122] See footnote 119.

[123] See CAA section 110(k)(2), 42 U.S.C. 7410(k)(2).

[124] Wyoming 2022 SIP submission at 178.

controlled or point to applicable regulations that may subject the facility to control measures that would limit future emissions increases. Given the lack of information regarding existing NO_X and PM controls or applicable regulations limiting these emissions, we cannot conclude that Wyoming's decision not to conduct a four-factor analysis was reasonable or justified.

Finally, the State failed to conduct a four-factor analysis evaluating PM emission reduction measures for several sources, including Laramie River Station, Dave Johnston Unit 4, and the Elk Basin Gas Plant, despite doing so for NO_X and/or SO_2 control measures. For the Elk Basin Gas Plant, the State did not perform a four-factor analysis for NO_X control measures for the incinerator and SO_2 control measures for the nine compressor engines. It is unclear whether these omissions are intentional (*e.g.,* based on effectively controlled emissions or some other justification) or an oversight, as Wyoming did not address the absence of these four-factor analyses in its SIP submission.

In summary, we propose to disapprove Wyoming's long-term strategy under CAA section 169A and 40 CFR 51.308(f)(2) because the State failed to consider the required four statutory factors to determine the measures necessary to make reasonable progress for certain sources it determined may affect visibility at Class I areas.

b. Failure To Document the Technical Basis of the State's Determination of the Emission Reduction Measures Necessary To Make Reasonable Progress

In formulating their long-term strategies, states must comply with the requirements under CAA section 110(a), CAA section 169A, and 40 CFR 51.308(f)(2)(iii) to document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which they are relying to determine the emission reduction measures necessary to make reasonable progress. The EPA must exercise its independent technical judgment in evaluating the adequacy of the State's long-term strategy, including the sufficiency of the underlying methodology and documentation; we may not approve a SIP that is based on unreasoned analysis or that lacks foundation in the CAA's requirements.[125]

As detailed in this section IV.C.2.b., we are proposing to disapprove Wyoming's long-term strategy due to the State's reliance on unsupported technical rationales and its failure to adequately document the technical basis on which it is relying to determine the emission reduction measures necessary to make reasonable progress (table 34).

TABLE 34—SOURCES, UNITS, AND ASSOCIATED POLLUTANTS WHERE THE STATE FAILED TO DOCUMENT THE TECHNICAL BASIS OF ITS DETERMINATION OF EMISSION REDUCTION MEASURES NECESSARY TO MAKE REASONABLE PROGRESS

Source	Unit(s)	Associated pollutant(s)
Dave Johnston *(PacifiCorp)*	4	SO_2.
Laramie Portland Cement *(Mountain Cement Company)*	Kilns 1, 2	NO_X.
Green River Works *(TATA Chemicals)*	Calciner 1, Calciner 2	NO_X, PM.
Elk Basin Gas Plant *(Contango Resources, Inc.)*	Engines (9)	NO_X.
Elk Basin Gas Plant *(Contango Resources, Inc.)*	Incinerator	SO_2.
Lost Cabin Gas Plant	Trains 2, 3	SO_2.

i. Laramie Portland Cement

We identified several consequential errors and unsupported technical rationales in the State's evaluation of NO_X emission reduction measures for Laramie Portland Cement, where NO_X is currently controlled using good combustion practices (Kilns 1 and 2) and a 2-stage preheater (Kiln 2). Considered in the aggregate, the problems detailed in this section IV.C.2.b.i. prevent us from concluding that the State's determination of the emission reduction measures for Laramie Portland Cement that are necessary to make reasonable progress is based on sound and adequately documented technical grounds.

First, there are consequential errors with the State's calculation of the level of NO_X emissions reductions achievable through installing SNCR on Kiln 2. The State calculated the combined NO_X emissions reductions that could be achieved on both Kiln 1 and Kiln 2 considering 10%, 15%, 20%, and 25% SNCR control efficiencies.[126] In addition, the State (through information submitted by the facility in appendix L) provided baseline and controlled emissions rates, including NO_X emissions reductions estimates at 10% and 25% control efficiency, for Kiln 1 and Kiln 2 separately (table 35).[127]

TABLE 35—WYOMING'S ANALYSIS OF LARAMIE PORTLAND CEMENT BASELINE AND ESTIMATED NO_X EMISSION REDUCTIONS FOR KILN 1 AND KILN 2 ASSOCIATED WITH SNCR NO_X CONTROLS AT 10% AND 25% CONTROL EFFICIENCY

Kiln	Baseline NO_X emissions	NO_X emissions reduction (control efficiency)
	tons/year	
Kiln 1	722.8	72.3 (10%) 181 (25%)
Kiln 2	1,511.6	861 (10%) 970 (25%)

Using the baseline NO_X emission rate provided, we performed an accuracy check on the calculations of the NO_X emission reductions for Kiln 2 [128] associated with 10% and 25% control efficiency. We multiplied the baseline

[125] *See Wyoming* v. *EPA,* 78 F.4th 1171, 1180–81 (10th Cir. 2023); *Oklahoma* v. *EPA,* 723 F.3d 1201 (10th Cir. 2013); *Arizona* v. *EPA,* 815 F.3d 519, 530–32 (9th Cir. 2016); *North Dakota* v. *EPA,* 730 F.3d 750, 760–61 (8th Cir. 2013).

[126] Wyoming 2022 SIP submission at 158.

[127] Wyoming 2022 SIP submission, appendix L.

[128] We found the State's calculated NO_X reductions for Kiln 1 at 10% and 25% control efficiencies to be correct.

NO_X emissions (tons/year) with each control efficiency (%) to achieve the NO_X emissions reduction (tons/year) associated with each control efficiency (table 36).[129]

TABLE 36—THE EPA'S ANALYSIS OF LARAMIE PORTLAND CEMENT ESTIMATED NO_X EMISSION REDUCTIONS FOR KILN 2 ASSOCIATED WITH SNCR NO_X CONTROLS AT 10% AND 25% CONTROL EFFICIENCY

Kiln	Baseline NO_X emissions	NO_X emissions reduction (level of control)
	tons/year	
Kiln 2	1,511.6	151 (10%) 378 (25%)

We find that Wyoming overestimated the amount of NO_X emissions reductions by 710 tons/year at 10% control efficiency and 592 tons/year at 25% control efficiency. This overestimation appears to be the result of a math error. Because the State's calculated NO_X emissions reductions associated with SNCR for Kiln 2 are incorrect, the emissions reductions for Kilns 1 and 2 combined, as well as the associated average cost effectiveness ($/ton) shown in table 16 for all levels of control efficiencies, are also incorrect. Given that the error impacts the control efficiencies of various control technologies, the calculated emissions reductions and cost effectiveness values cannot be relied upon to determine what NO_X emissions control measures for Laramie Portland Cement are necessary to make reasonable progress.

Second, the State did not document the technical basis of the SNCR control efficiencies that were used to calculate costs of compliance for the four-factor analysis. The State evaluated the cost effectiveness of SNCR NO_X emission controls on Kiln 1 and Kiln 2 using control efficiencies ranging from a minimum of 10% to a maximum of 25% without any supporting documentation.[130] The EPA recognizes that it is challenging to predict the control efficiency of SNCR for long cement kilns.[131] We agree that absent the use of post-installation control demonstrations to set NO_X emission limits, it is appropriate to include a range of control efficiencies in the four-factor analysis. However, Wyoming did not justify its use of SNCR control efficiencies as low as 10–25% for Kiln 1 and Kiln 2. In 2017, we revised the Montana regional haze FIP NO_X emission limit on a long kiln in Montana. As part of that action, we assessed information on SNCR control efficiencies that had been demonstrated on long kilns since our promulgation of the original FIP and SNCR-based NO_X emission limit in 2012.[132] [133] We found that the control efficiency of SNCR installed on kilns as a result of consent decrees [134] is highly variable and ranges from 29% to 47%, with a mean of 40%.[135] Wyoming did not consider this or any other data showing higher SNCR efficiencies in the four-factor analysis for Laramie Portland Cement. While the facility asserted generally that other cement kilns ''have challenges'' and ''are battling issues'' with SNCR, it provided no documentation of the control efficiencies those other cement kilns have achieved.[136] Therefore, we find that Wyoming did not adequately document the technical basis of the control efficiencies it relied on, and, as a result, likely underestimated the cost effectiveness of SNCR.

Third, the State included the potential loss of cement kiln dust sales in its cost analysis without providing technical documentation to substantiate the expected loss. The State projected a loss of over $13,000,000 in kiln dust sales across all control efficiencies due to purported contamination associated with the operation of SNCR.[137] This figure represents a very significant portion—over 76%—of the total annualized costs associated with SNCR on Kilns 1 and 2. However, Wyoming did not submit any documentation on the likelihood of contamination or the specific amount of projected lost sales, which greatly influenced the cost-effectiveness of controls. Given the lack of justification and supporting evidence, incorporating potential lost cement kiln dust sales into the cost analysis was unreasonable.

Fourth, the State did not provide technical documentation to support its reliance on a 10-year amortization period and 10% interest rate in its cost analysis for SNCR on Kilns 1 and 2. The amortization period (also termed the remaining useful life) and interest rate are used to calculate annualized capital costs. Annualized capital costs ultimately determine, along with the tons of emissions reduced and additional annualized costs, the cost per ton of emissions reduced of the evaluated control technology. Wyoming used a 10-year equipment life for SNCR [138]—half the 20-year amortization period specified in EPA's Control Cost Manual [139]—without providing documentation justifying that deviation or otherwise explaining why a 10-year equipment life is reasonable. And while the Control Cost Manual recommends using a firm-specific nominal interest rate if one is available,[140] the State provided no documentation to support its use of a 10% interest rate, which was more than double the bank prime rate as of January 2020 [141] (when the analysis was conducted) and well outside the range of similar firms' interest rates.[142]

EPA's Control Cost Manual provides detailed technical guidance on the estimation of capital and annual costs for air pollution control devices for stationary sources. The Control Cost Manual is commonly used by the EPA, State and local officials, and industry parties that must comply with EPA regulations or EPA permits. EPA has been updating the Control Cost Manual under the authority of the Consolidated Appropriations Act of 2014.[143] Chapter

[129] Laramie Portland Cement_EPA NO_X calculations_January 2024.

[130] 2022 Wyoming SIP submission at 157–58.

[131] 82 FR 17948, 17951 (April 14, 2017).

[132] 82 FR 17948 (April 14, 2017).

[133] 82 FR 42738 (September 12, 2017).

[134] SNCR was installed on several wet or dry long kilns in association with consent decree enforcement actions.

[135] Technical Support Document—Oldcastle Trident Federal Implementation Plan Revision, March 8, 2017. *See* Attachment 1 to the TSD, Summary of SNCR Performance Data for Long Cement Kilns.

[136] Wyoming 2022 SIP submission, appendix L at L–29 to L–30. The facility also stated that SNCR at a cement plant in Tulsa owned by its parent company has been ''operating with some success.'' Id. at L–30.

[137] Wyoming 2022 SIP submission at 158 and appendix L at L–34 and L–38.

[138] Cost analyses found in appendix L of Wyoming's 2022 SIP submission include an amortization period of 10 years for SNCR on Kilns 1 and 2. The narrative overview on page 157 of Wyoming's 2022 SIP submission erroneously states that the cost analysis used an amortization period of 20 years.

[139] EPA, ''Control Cost Manual,'' section 4, chapter 1, April 2019, page 1–54, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited January 2024).

[140] EPA, ''Control Cost Manual,'' section 1, chapter 2, November 2017, page 16, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited January 2024).

[141] Data from the Federal Reserve shows that the bank prime rate between November 2019 and February 2020 was 4.75% (*See* Bank Prime Rate Graph, March 25, 2024). *https://www.federalreserve.gov/releases/h15/* (last visited February 2024).

[142] *See, e.g.,* 2022 South Dakota Regional Haze State Implementation Plan. 2022. pp. 134, 137.

[143] Public Law 113–76 (2014); 160 Cong. Rec. H475, H979 (January 15, 2014) (stating that the process for reviewing regional haze SIPs ''is well-served when EPA, States, and industry work collaboratively to ensure that dispersion models are continually improved and updated to ensure the most accurate predictions of visibility impacts, as well as a uniform set of cost estimates'').

revisions undergo public notice and comment.[144] In the EPA's 2019 Guidance, we noted that if a state deviates from the principles and factors recommended in the Control Cost Manual, it should explain and document how its alternative approach is appropriate.[145] Because Wyoming provided no justification or documentation to support the unusually short amortization period and atypically high firm-specific interest rate it used to evaluate SNCR for Laramie Portland Cement, as required by 40 CFR 51.308(f)(2)(iii), we find that the State's cost analysis methodology lacks adequate technical support.

In summary, the multitude of methodological errors and unsupported technical bases, considered collectively, makes it impossible for us to determine the adequacy of the State's determination of the emission reduction measures for Laramie Portland Cement that are necessary to make reasonable progress.

ii. Lost Cabin Gas Plant

We identified several defects in the State's cost analysis for SO_2 controls at the Lost Cabin Gas Plant, including conflicting cost figures and SO_2 emissions data, use of an unsubstantiated amortization period and firm-specific interest rate, and an unjustifiably low estimate of wet scrubber control efficiency. Considered in the aggregate, the problems detailed in this section IV.C.2.b.ii. prevent us from concluding that the State's determination of the emission reduction measures for Lost Cabin Gas Plant that are necessary to make reasonable progress is based on sound and adequately documented technical grounds.

First, we find numerous discrepancies between the cost figures, specifically 'Total Annual Cost ($/year)' and 'Cost per Ton of SO_2 Removed ($/ton)' on pages 179 and 180 and appendix J of the Wyoming 2022 SIP submission.[146] Ultimately, these discrepancies lead to the inaccurate calculation of cost/ton of SO_2 emissions removed ($/ton) in table 11–34 for both Trains 2 and 3.

Second, other aspects of Wyoming's cost analysis lack adequate documentation. The State provides no support for its reliance on a 15-year amortization period (remaining useful life) in its evaluation of wet scrubbers for SO_2 control,[147] which is half the useful life for wet scrubbers (30 years) recommended in the EPA's Control Cost Manual.[148] The State also relied on a 10% firm-specific interest rate—more than double the bank prime rate at the time of analysis—without offering any rationale or supporting documentation.[149] These factors are important inputs in the calculation of control technology cost effectiveness, and Wyoming's failure to substantiate them undermines its cost analysis.

Third, the State's use of a 90% control efficiency for wet scrubber SO_2 emissions control is not adequately supported. As documented in the Control Cost Manual, wet scrubbers typically achieve removal efficiencies of between 95% and 99% for most industrial applications, with many vendors publishing SO_2 removal efficiencies of over 99% for new wet FGD systems.[150] [151] We acknowledge the State's concern regarding the necessary water requirements to supply a 95% efficiency or greater wet scrubber system, which it cited as justification for using a 90% efficiency. However, the State makes no attempt to quantify or otherwise detail the incremental water requirements necessary to achieve a 95% or greater control efficiency to support its rejection of control efficiencies above 90% for a wet scrubber system. Without any supporting demonstration of the impact of those water requirements on the cost analysis, beyond a bare assertion that supplying additional water would not be economical, we find the State's assumption of 90% wet scrubber control efficiency to be unfounded. Relatedly, despite its concern regarding the necessary water requirements for the operation of wet scrubbers, the State did not demonstrate why less water-intensive SO_2 emissions control options (*i.e.,* dry scrubbing) are not feasible. Indeed, dry scrubbing was identified in public comments as a potential control option.[152] The State provided no explanation for its failure to evaluate whether dry scrubbing is an emission reduction measure that is necessary to make reasonable progress toward the national visibility goal.

Collectively, these factors—conflicting cost figures, an unsubstantiated amortization period and firm-specific interest rate, and an unjustifiably low estimate of wet scrubber control efficiency—undercut the technical support for Wyoming's cost analysis and its resulting conclusion that additional SO_2 controls are not cost-effective at the Lost Cabin Gas Plant.

iii. Elk Basin Gas Plant, Dave Johnston Unit 4, and Green River Works

Finally, some of the State's four-factor analyses are critically incomplete because there are gaps in technical analysis with no documentation or justification to support that lack of analysis. For example, the State provided no data or cost figures to support its decision not to evaluate additional SO_2 emissions control measures for Dave Johnston Unit 4, including possible upgrades to the existing spray dryer absorber, other than stating that scrubber upgrades are more effective than DSI for incremental pollution control removal.[153] In its evaluation of NO_X controls for Elk Basin Gas Plant's nine compressor engines and SO_2 controls for the plant's incinerator, the State omitted key elements necessary to determine cost-effectiveness: figures related to direct, indirect, and total costs; information necessary (*i.e.,* interest rate, amortization period) to determine the capital recovery factor and associated total annual costs and annualized capital costs; the assumed control efficiency of LEC NO_X emissions controls on the compressor engines; and the SO_2 emissions baseline for the incinerator.[154] And in its evaluation of NO_X and PM emissions controls for Calciner 1 and Calciner 2 at Green River

[144] Id.; 81 FR 65352 (September 22, 2016) (section 1, chapter 2 on cost estimation concepts and methodology); 80 FR 33515 (June 12, 2015) (section 4, chapter 1 on SNCR and section 4, chapter 2 on SCR).

[145] 2019 Guidance at 31.

[146] On page 179 of the Wyoming 2022 SIP submission, annualized costs ($/year) for the installation of wet scrubbers on Train 2 are $1,442,233 and on Train 3 are $2,438,411. These figures conflict with those listed on the following page (page 180) in table 11–34 for Train 2 ($1,348,694) and Train 3 ($2,272,044). Additionally, while the cost/ton figures on pages 179 and in table 11–34 are consistent for Train 2 ($7,710/ton) and Train 3 ($7,470/ton), they conflict with the cost/ton figures provided in appendix J for Train 2 ($8,250/ton) and Train 3 ($8,010/ton).

[147] Wyoming's 2022 SIP submission at 180 and appendix J.

[148] EPA, ''Control Cost Manual,'' section 5, chapter 1, April 2021, pages 1–8, 1–35, and 1–36, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited February 2024).

[149] Data from the Federal Reserve shows that the bank prime rate between November 2019 and February 2020 was 4.75% (*See* Bank Prime Rate Graph, March 25, 2024). *https://www.federalreserve.gov/releases/h15/* (last visited February 2024).

[150] EPA, ''Control Cost Manual,'' section 5, chapter 1, April 2021, pages 1–9 and 1–12 available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited February 2024).

[151] The term ''scrubber'' is used to refer to control devices that use gas absorption to remove gases from waste gas streams. When used to remove SO_2 from flue gas, gas absorbers are commonly called flue gas desulfurization (FGD) systems.

[152] Wyoming 2022 SIP submission at 1,122.

[153] Wyoming 2022 SIP submission at 144.

[154] Wyoming 2022 SIP submission at 168–172.

Works, the State failed to provide a demonstration with supporting documentation that existing measures are likely not necessary to make reasonable progress, despite having made that showing for the C Boiler and D Boiler.[155]

In summary, for the reasons explained in this section IV.C.2.b., we propose to disapprove Wyoming's long-term strategy under CAA section 169A and 40 CFR 51.308(f)(2) because the State relied on unsupported technical rationales and failed to adequately document the technical basis on which it relied to determine the emission reduction measures necessary to make reasonable progress.

c. Sources Where the State Unreasonably Rejected Potential Emission Reduction Measures

We also propose to disapprove Wyoming's long-term strategy due to the State's unreasonable rejection of emission reduction measures at the Elk Basin Gas Plant and the Cheyenne Fertilizer Facility (table 37).

TABLE 37—SOURCES, UNITS, AND ASSOCIATED POLLUTANTS AND EMISSION CONTROL TECHNOLOGY WHERE THE STATE UNREASONABLY REJECTED EMISSION REDUCTION MEASURES

Source	Unit(s)	Associated pollutant(s)	Emission control technology
Elk Basin Gas Plant *(Contango Resources, Inc.)*	Engines (9)	NO_X	LEC.
Cheyenne Fertilizer Facility *(Dyno Nobel, Inc.)*	ENG004, ENG005 (engines)	NO_X	LEC.
Cheyenne Fertilizer Facility *(Dyno Nobel, Inc.)*	CTW001, CTW003 (cooling towers).	PM	Upgraded Mist Eliminators.

In its evaluation of NO_X emissions controls for Elk Basin Gas Plant's nine engines, the State determined the cost/ton of LEC to be between $1,500–$2,200 per ton of NO_X emissions reduced, with a total expected reduction of 1,793.5 tons of NO_X per year.[156] Similarly, the State determined the cost/ton of an LEC retrofit at Cheyenne Fertilizer Facility for engines ENG004 and ENG005 to be $1,067 per ton of NO_X emissions reduced, with a total expected reduction of 229 tons of NO_X per year for each engine.[157] The State then rejected LEC control technology for both facilities despite concluding, after consideration of the four statutory factors as well as emission trends and permit conditions, that these facilities may warrant further analysis of emission controls to reach reasonable progress. Notably, Wyoming did not determine these cost/ton values for LEC to be unreasonable. Indeed, cost-effectiveness values of $1,067–$2,200 are in line with what the EPA and states found reasonable for regional haze control measures in the first planning period, even without adjusting for inflation.[158] While Wyoming stated it would further analyze these facilities in its next regional haze progress report, nothing in the CAA or RHR allows states to defer controls that are shown, through four-factor analysis, to be necessary to make reasonable progress. States may not avoid their second planning period obligations by delaying decision making to a future date.[159]

For its evaluation of PM emissions controls at the Cheyenne Fertilizer Facility on cooling towers CTW001 and CTW003, the State found the cost/ton for upgraded mist eliminators to be $1,056 for CTW001 and $2,368 for CTW003 per ton of PM emissions reduced, for total expected reductions of 15.5 tons (CTW001) and 2.4 tons (CTW003) of PM per year.[160] Here again, Wyoming did not determine these cost/ton values to be unreasonable. However, the State concluded that the total capital investment for upgraded mist eliminators of $153,600 (for CTW001) and $53,990 (for CTW003) was not justified given what it considered to be the ''minute'' amount of emissions reductions that could be achieved; the State also cited declining PM emissions trends. At the same time, Wyoming concluded that the Cheyenne Fertilizer Facility may warrant further analysis of emission controls in the next regional haze progress report. We find that the State did not adequately justify its rejection of upgraded mist eliminators. Wyoming inappropriately relied on declining emissions trends—which is not one of the four statutory factors—to summarily reject controls shown to be cost-effective and otherwise reasonable through four-factor analysis.

In summary, we propose to disapprove Wyoming's long-term strategy under 40 CFR 51.308(f)(2) because the State unreasonably rejected potential controls for certain sources and thus did not reasonably determine the emission reduction measures necessary to make reasonable progress.

d. Other Unjustified Reasons for Rejecting All Additional Emission Reduction Measures

After evaluating potential emission reduction measures at the source-specific level, Wyoming explained its overall reasoning for not requiring any additional measures in its long-term strategy to make reasonable progress for the second planning period for affected Class I areas.[161] Whether individually or in combination, Wyoming's reasons are not supported by the CAA and the RHR and provide another basis for our proposed disapproval of Wyoming's long-term strategy.

First, Wyoming unreasonably relied on generalized and unsubstantiated assertions that any emission reduction

[155] Wyoming 2022 SIP submission at 166–167.

[156] Wyoming 2022 SIP submission at 168. As explained in section IV.C.2.a.iii., the State did not supply key information necessary for the EPA to determine the appropriateness of this cost analysis.

[157] Wyoming 2022 SIP submission at 184.

[158] The 2019 Guidance emphasized that ''[w]hen the cost/ton of a possible measure is within the range of the cost/ton values that have been incurred multiple times by sources of similar type to meet regional haze requirements or any other CAA requirement, this weighs in favor of concluding that the cost of compliance is not an obstacle to the measure being considered necessary to make reasonable progress.'' 2019 Guidance at 40. After evaluating first planning period cost of compliance values, plus the other BART statutory factors and/or the four reasonable progress statutory factors, the vast majority of cost/ton values < $2,500/ton were found to be reasonable and cost-effective. Examples for several sources can be found at: 76 FR 16168, 16180–81 (Mar. 22, 2011) (proposed), finalized at 76 FR 81728 (Dec. 28, 2011) (Oklahoma); 76 FR 58570, 58586 (Sept. 21, 2011) (proposed), finalized at 77 FR 20894 (Apr. 6, 2012) (North Dakota); 77 FR 24794, 24817 (Apr. 25, 2012) (proposed), finalized at 77 FR 51915 (Aug. 28, 2012) (New York); 77 FR 18052, 18070–71 (Mar. 26, 2012) (proposed), finalized at 77 FR 76871 (Dec. 31, 2012) (Colorado); and 77 FR 73369, 73378 (Dec. 10, 2012) (proposed), finalized at 78 FR 53250 (Aug. 29, 2013) (Florida). These costs have not been adjusted for inflation.

[159] *C.f. NRDC* v. *EPA,* 22 F.3d 1125, 1134 (D.C. Cir. 1994) (noting that SIPs must ''contain[ ] something more than a mere promise to take appropriate but unidentified measures in the future''). In addition, because progress reports due in 2025 will not take the form of SIP revisions that must be approved or disapproved by EPA, it is not clear how Wyoming could evaluate and potentially impose emission reduction measures at Elk Basin Gas Plant through that process. *See generally* 40 CFR 51.308(g).

[160] Wyoming 2022 SIP submission at 185.

[161] Wyoming 2022 SIP Submission at 203–06.

measures would impose economic hardships on sources and negatively affect rural communities. Wyoming provided no analyses, data, or other evidence to support its assertions that the cost of additional controls could force energy producers out of the market, harm ratepayers, impose economic stress on rural communities, or cause grid instability. In CAA section 169A, Congress established the national goal of preventing any future and remedying any existing impairment of visibility in Class I areas; it then directed states to develop SIPs containing long-term strategies comprised of emission limits, schedules of compliance, and other measures necessary to make reasonable progress toward that national goal through consideration of the four statutory factors.[162] Wyoming cannot overcome Congress's express mandate by relying on an unsupported policy position that any additional control costs will cause unwarranted economic harm.

Second, past and projected emissions reductions do not support Wyoming's rejection of all additional control measures for the second planning period. To support its determination that no further emissions reductions are warranted, Wyoming pointed to first implementation period measures, increasing renewable energy generation, facility shutdowns and conversions, and measures taken in other states and nationwide. The RHR, however, sets out an iterative planning process by which states have a continuing obligation to determine the emission reduction measures necessary to make reasonable progress in each implementation period. As we recognized in the 2017 RHR Revisions, while first implementation period measures resulted in significant reductions in emissions nationwide, continued progress is still necessary and is required by statute.[163] The fact that some emissions reductions have already been achieved and are expected to occur in the future, whatever the source of those reductions, does not exempt states from determining the measures necessary to make reasonable progress based on consideration of the four statutory factors in each planning period. Furthermore, as detailed in section IV.C.2.a.ii. of this document, the facility shutdowns cited by the State (with the exception of Dave Johnston Unit 3) are not federally enforceable or have otherwise not been validated. Nor did Wyoming quantify or substantiate the changes in emissions that it believes will occur due to increased renewable energy generation.[164]

Third, Wyoming unreasonably pointed to other sources' contribution to visibility impairment in the State's Class I areas as a reason not to require its own emission reduction measures. But nothing in the CAA or RHR authorizes the rejection of control measures that are shown to be appropriate through four-factor analysis on the basis that some portion of visibility-impairing pollutants affecting Class I areas originates from international anthropogenic sources or natural sources such as wildfires. The four statutory factors do not include a state's relative level of contribution of visibility-impairing pollutants. Indeed, Congress's national goal is ''the prevention of *any* future, and the remedying of *any* existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution,'' including visibility impairment caused by sources within the states.[165]

Fourth, Wyoming improperly relied on the fact that its seven Class I areas are currently below the adjusted URP and are projected to remain so in 2028. As the EPA has consistently explained, states may not use the URP as a ''safe harbor'' to conclude that additional emission reduction measures are not necessary for reasonable progress. The 2017 RHR explains that the CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress states must consider the four statutory factors. Treating the URP as a safe harbor would be inconsistent with the statutory requirement that states assess the potential to make further reasonable progress towards natural visibility goal in every implementation period. Even if a state is currently on or below the URP, there may be sources contributing to visibility impairment for which it would be reasonable to apply additional control measures in light of the four factors. Although it may conversely be the case that no such sources or control measures exist in a particular state with respect to a particular Class I area and implementation period, this should be determined based on a four-factor analysis for a reasonable set of in-state sources that are contributing the most to the visibility impairment that is still occurring at the Class I area. It would bypass the four statutory factors and undermine the fundamental structure and purpose of the reasonable progress analysis to treat the URP as a safe harbor, or as a rigid requirement.[166] The EPA reiterated this concept in the 2019 Guidance [167] and in the 2021 Clarifications Memo.[168] The CAA and RHR do not include the URP among the four factors states must consider in developing their long-term strategies. Treating the URP as a safe harbor, as Wyoming has done, is inconsistent with statutory requirements and undermines the core structure of an appropriate regional haze analysis.

Finally, Wyoming claims that WRAP modeling indicates that ''potential additional controls will have little to no influence (< 0.1 dv)'' on visibility conditions at Wyoming Class I areas.[169] There is no basis for Wyoming's assertion. First, the State does not explain what ''potential additional controls'' on Wyoming sources were modeled; our review of the WRAP modeling information shows that none were. To support its claim, Wyoming pointed to the figures in Chapter 15 of its SIP submission, which show visibility modeling results for various emission scenarios: the WRAP modeling scenario ''2028OTBa2'' (''On the Books Inventory'') reflects emissions levels associated with implementation by 2028 of all applicable ''on the books'' federal and state requirements; [170] the WRAP modeling scenario ''PAC2'' (''Potential Additional Controls'') reflects emissions levels associated with implementation of potential additional controls beyond those included in the 2028OTBa2/''On the Books Inventory'' scenario.[171] No potential additional control measures beyond the ''on the books inventory'' were modeled for Wyoming, as indicated in tables 9–1 through 9–4 of Wyoming's 2022 SIP submission,[172] WRAP spreadsheets for the modeling scenarios,[173] and other WRAP modeling documentation.[174] Instead, the < 0.1

[162] *See* CAA sections 169A(a)(1), (b)(2)(B), and (g)(1).

[163] 82 FR 3080.

[164] *See* footnote 117.

[165] CAA section 169A(a)(1) (emphasis added); section 169A(b)(2) (requiring states to develop SIPs to address visibility impairment).

[166] 82 FR 3099–3100.

[167] 2019 Guidance at 49.

[168] 2021 Clarifications Memo at 15.

[169] Wyoming 2022 SIP Submission at 205.

[170] WRAP Technical Support Systems for Regional Haze Planning: Emissions Methods, Results, and References, September 30, 2021 (''WRAP Emissions Reference''), 7–9.

[171] Id. at 11.

[172] Wyoming 2022 SIP submission at 115–119. A comparison of the columns titled '2028OTBa2' and '2028 PAC2' in tables 9–1 through 9–4 shows that NO_X, SO_x, PM_{10}, and $PM_{2.5}$ emissions levels for Wyoming sources are the same.

[173] WRAP PAC2 and 2028OTBa2_August 17 2021. Comparing the Wyoming emissions levels listed in the summary tables on the 'WRAP 2028PAC2 point emissions' and 'WRAP 2028OTBa2 point emissions' worksheets shows that Wyoming emissions for the two scenarios are the same.

[174] WRAP Emissions Reference, table 5 at 11.

deciview modeled visibility improvement that Wyoming referenced is attributable to potential emission reductions in other states.[175] Simply put, Wyoming did not model visibility improvements associated with the emission reduction measures it considered, and rejected, through four-factor analysis. The State therefore had no basis to conclude that potential additional controls would have little to no influence on visibility conditions at its Class I areas.[176]

In conclusion, Wyoming's unsubstantiated reasons for not requiring any additional emission reduction measures as part of its long-term strategy to make reasonable progress lack foundation in the CAA and RHR. Therefore, we propose to disapprove Wyoming's long-term strategy under CAA section 169A and 40 CFR 51.308(f)(2).

e. Other Long-Term Strategy Requirements (40 CFR 51.308(f)(2)(ii)–(iv))

States must meet the additional requirements specified in 40 CFR 51.308(f)(2)(ii)–(iv) when developing their long-term strategies. 40 CFR 51.308(f)(2)(ii) requires states to consult with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in Class I areas to develop coordinated emission management strategies. Chapters 14.7.2 through 14.7.5 of Wyoming's 2022 SIP submission describe the State's consultation with other states throughout the development of its regional haze plan.

40 CFR 51.308(f)(2)(iii) requires states to document the technical basis, including modeling, monitoring, costs, engineering, and emissions information, on which the state is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I area it impacts. The State relied on WRAP technical information, modeling, and analysis to support development of its long-term strategy.[177]

40 CFR 51.308(f)(2)(iv) specifies five additional factors states must consider in developing their long-term strategies. The five additional factors are: emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; measures to mitigate the impacts of construction activities; source retirement and replacement schedules; basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. Chapter 14.5 of Wyoming's 2022 SIP submission describes each of the five additional factors.

Regardless, as explained in the preceding sections, due to flaws and omissions in its four-factor analyses and the resulting control determinations, we find that Wyoming failed to reasonably ''evaluate and determine the emission reduction measures that are necessary to make reasonable progress'' by considering the four statutory factors as required by CAA section 169A(b)(2)(A), CAA section 169A(g)(1), and 40 CFR 51.308(f)(2)(i). We also find that Wyoming failed to adequately document the technical basis that it relied upon to determine these emissions reduction measures, as required by 40 CFR 51.308(f)(2)(iii). In so doing, Wyoming failed to submit to the EPA a long-term strategy that includes ''the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress'' [178] Consequently, the EPA finds that the Wyoming's 2022 SIP submission does not satisfy the long-term strategy requirements of 40 CFR 51.308(f)(2). Therefore, we are proposing to disapprove these corresponding portions of Wyoming's 2022 SIP submission.

D. Reasonable Progress Goals

Section 51.308(f)(3)(i) requires a state in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) in states' long-term strategies, as well as implementation of other CAA requirements.

After establishing its long-term strategy, Wyoming developed reasonable progress goals for each Class I area for the 20% most impaired days and 20% clearest days based on the results of 2028 WRAP modeling (table 38).[179]

TABLE 38—REASONABLE PROGRESS GOALS FOR THE 20% MOST IMPAIRED DAYS AND 20% CLEAREST DAYS FOR WYOMING CLASS I AREAS

Class I Area	20% Most impaired days			20% Clearest days	
	Average baseline conditions (2000–2004)	2028 Uniform progress goal [1]	2028 Reasonable progress goal [2]	Average baseline conditions (2000–2004)	2028 Reasonable progress goal
	Deciviews				
Grand Teton National Park ..... Teton Wilderness Area Yellowstone National Park	8.3	7.2	7	2.6	2.3

[175] Table 5 of the WRAP Emissions Reference identifies the states that included ''Potential Additional Controls'' beyond ''On the Books'' emissions controls to evaluate the potential visibility response in 2028. The 'WRAP 2028PAC2 point emissions' worksheet in the WRAP PAC2 and 2028OTBa2_August 17 2021 file lists the emissions levels that were modeled for those states.

[176] In addition, Wyoming said nothing about potential visibility improvements at out-of-state Class I areas. Under CAA section 169A(b)(2) and 40 CFR 51.308(f)(2), Wyoming's long-term strategy must address regional haze visibility impairment at both in-state and out-of-state Class I areas that may be affected by emissions from Wyoming sources.

[177] Wyoming 2002 SIP submission at 24–25.

[178] See also CAA section 169A(b)(2), 169A(b)(2)(B) (requiring regional haze SIPs to ''contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal, . . . including . . . a long-term . . . strategy for making reasonable progress[.]'') and CAA section 110(a)(2)(A) (requiring SIPs to contain ''enforceable emission limitations and other control measures, means, or techniques . . . . as well as schedules and timetables for compliance.''

[179] Wyoming 2022 SIP submission at 234–236.

TABLE 38—REASONABLE PROGRESS GOALS FOR THE 20% MOST IMPAIRED DAYS AND 20% CLEAREST DAYS FOR WYOMING CLASS I AREAS—Continued

Class I Area	20% Most impaired days			20% Clearest days	
	Average baseline conditions (2000–2004)	2028 Uniform progress goal [1]	2028 Reasonable progress goal [2]	Average baseline conditions (2000–2004)	2028 Reasonable progress goal
	Deciviews				
North Absaroka Wilderness Area ..... Washakie Wilderness Area	8.8	8.1	6.9	2.0	1.7
Bridger Wilderness Area ..... Fitzpatrick Wilderness Area	8	7.1	6.3	2.1	1.8

[1] Based on the adjusted glidepath.
[2] Based on WRAP 2028OTBa2.

The reasonable progress goals are based on Wyoming's long-term strategy, the long-term strategy of other states that may affect Class I areas in Wyoming, and other CAA requirements. Per 40 CFR 51.308(f)(3)(iv), the EPA must evaluate the demonstrations the State developed pursuant to 40 CFR 51.308(f)(2) to determine whether the State's reasonable progress goals for visibility improvement provide for reasonable progress towards natural visibility conditions. As previously explained in sections IV.C.2.a.–d., we are proposing to disapprove Wyoming's long-term strategy for failing to meet the requirements of 40 CFR 51.308(f)(2).[180] Therefore, we also propose to disapprove Wyoming's reasonable progress goals under 40 CFR 51.308(f)(3) because compliance with that requirement is dependent on compliance with 40 CFR 51.308(f)(2).

E. Reasonably Attributable Visibility Impairment (RAVI)

The RHR contains a requirement at 40 CFR 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment,'' [181] also known as RAVI. Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess RAVI, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment. The EPA has not advised the State to that effect; nor did the State indicate that FLMs for Bridger Wilderness Area, Fitzpatrick Wilderness Area, Grand Teton National Park, North Absaroka Wilderness Area, Teton Wilderness Area, Washakie Wilderness Area, and Yellowstone National Park identified any RAVI from Wyoming sources. For this reason, the EPA proposes to approve the portions of Wyoming's 2022 SIP submission relating to 40 CFR 51.308(f)(4).

F. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this section is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the IMPROVE network.

Under 40 CFR 51.308(f)(6)(i), States must provide for the establishment of additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the state are being achieved. For states with Class I areas (including Wyoming), § 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the state. Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state. 40 CFR 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available. Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions. Finally, 40 CFR 51.308(f)(6)(vi) requires the SIP to provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility.

Wyoming describes its participation in the IMPROVE network, which is comprised of 110 monitoring sites across the nation, three of which are in Wyoming. The State relied on the IMPROVE monitoring network to assess visibility at Class I areas across Wyoming [182] and considered the three monitoring sites, YELL2, NOAB1, and BRID1, to be adequate for assessing reasonable progress goals at the State's seven Class I areas.[183] Using the monitoring data procedures described in its 2022 SIP submission along with

[180] Wyoming's 2022 SIP submission does not include enforceable source retirement dates or any enforceable emission reduction measures in the long-term strategy for the second planning period under 40 CFR 51.308(f)(2). However, projected emissions reductions reflecting the planned—but not enforceable—shutdowns of Naughton Units 1 and 2 and Dave Johnston Units 1 and 2 are included in the 2028 WRAP modeling scenario (WRAP 2028OTBa2 and RepBase2_August 17 2021 in the docket) that Wyoming used as the basis of its 2028 reasonable progress goals under 40 CFR 51.308(f)(3). As noted in section IV.C.2.a.ii. of this document, PacifiCorp has already pushed back those sources' planned retirement dates in the time since Wyoming finalized its 2022 SIP submission. Because Wyoming's reasonable progress goals reflect projected emission reductions that are not enforceable and are not included in the SIP, they do not comport with 40 CFR 51.308(f)(3)(i)'s requirement that reasonable progress goals reflect *enforceable* emissions limitations, compliance schedules, and other measures.

[181] The EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

[182] Wyoming 2022 SIP submission at 31–32.
[183] Id. at 34–63.

other technical information supplied by WRAP,[184] [185] the State determined the contribution of in-State emissions to Class I areas inside and outside Wyoming.[186] In addition, the State also provided a statewide inventory of emissions that are reasonably anticipated to cause or contribute to visibility impairment in Class I areas; the State relied primarily on 2014 data but also estimated future projected emissions.[187]

The EPA finds that Wyoming has met the requirements of 40 CFR 51.308(f)(6), including through its continued participation in the IMPROVE network and WRAP RPO and its ongoing compliance with the Air Emissions Reporting Requirements (AERR). There is no indication that further SIP elements are necessary at this time for Wyoming to assess and report on visibility. Therefore, the EPA proposes to approve the monitoring strategy and other state implementation plan elements of Wyoming's 2022 SIP submission as meeting the requirements of 40 CFR 51.308(f)(6).

G. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

40 CFR 51.308(f)(5) requires that periodic comprehensive revisions of states' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

In its 2022 SIP submission, Wyoming included the elements of the periodic progress report specified in 40 CFR 51.308(f)(5) and 40 CFR 51.308(g)(1)–(5). Wyoming summarized the facility improvements made during and after the first implementation period, including emission control measures installed and emission reductions achieved by the facilities that most affected each Class I area.[188] In addition, the State summarized the implementation status of ongoing air pollution control programs, measures to mitigate construction activities, source retirement and replacement schedules, and smoke management practices and programs, as well as projected changes in point, area, and mobile source emissions.[189] The State also provided emissions inventories for NO_X, SO_2, PM, and CO that identify the type of source, activity, and pollutant representing 2014 actual emissions and 2014–2018 representative baseline emissions.[190]

Visibility conditions (in deciviews) are reported in Wyoming's 2022 SIP submission for the most impaired and clearest days. Visibility conditions are expressed in terms of 5-year averages for the baseline period (2000–2004), 2008–2012 period, and current period (2014–2018), as well as the progress made since the baseline period ((2000–2004)–(2014–2018)) and during the last implementation period ((2008–2012)–(2014–2018)) for each Class I area.[191] Wyoming also provided an assessment and discussion of the significant changes in anthropogenic emissions since the first implementation period.[192]

Because Wyoming's 2022 SIP submission addresses the requirements of 40 CFR 51.308(g)(1) through (5), the EPA finds that Wyoming has met the progress report requirements of 40 CFR 51.308(f)(5). Therefore, we propose to approve Wyoming's 2022 SIP submission as meeting the requirements of 40 CFR 51.308(f)(5) and 40 CFR 51.308(g) for periodic progress reports.

H. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires states to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, the 40 CFR 51.308(i)(2) FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also lists two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

Wyoming's 2022 SIP submission summarizes the State's consultation and coordination with the FLMs. In August and September 2020, Wyoming began initial consultation and provided the FLMs with the four-factor analyses that were performed for Wyoming's sources. Subsequent consultation meetings with the FLMs were held every 4–8 weeks. Wyoming shared a complete draft of the SIP with the FLMs on August 10, 2021, which initiated the 60-day consultation period. Following the FLM consultation period, a 30-day public comment period took place in February and March 2022,

[184] Id. at 31–33.

[185] Wyoming relied on the WRAP Technical Support System (TSS) ''Analysis and Planning'' section to determine baseline, natural, and current conditions for Class I areas in Wyoming. *https://views.cira.colostate.edu/tssv2/.*

[186] Wyoming 2022 SIP submission at 34–106.

[187] Id. at 114–120.

[188] Wyoming 2022 SIP submission at 212–223.

[189] Id. at 223–229.

[190] Id. at 114–120.

[191] Id. at 42–61.

[192] Id. at 114–120.

followed by a public hearing conducted on March 23, 2022.[193] The State explained how it addressed comments received by the FLMs [194] and committed to coordinating and consulting with the FLMs during the development of future progress reports and SIP submissions, as well as during the implementation of programs having the potential to contribute to visibility impairment in Class I areas.[195]

Compliance with 40 CFR 51.308(i) is dependent on compliance with 40 CFR 51.308(f)(2)'s long-term strategy provisions and 40 CFR 51.308(f)(3)'s reasonable progress goals provisions. Because the EPA is proposing to disapprove Wyoming's long-term strategy under 51.308(f)(2) and the reasonable progress goals under 51.308(f)(3), the EPA is also proposing to disapprove the State's FLM consultation under 51.308(i). While Wyoming did take administrative steps to provide the FLMs the opportunity to review and provide feedback on the State's draft regional haze plan, the EPA cannot approve that consultation because it was based on a plan that does not meet the statutory and regulatory requirements of the CAA and the RHR, as described throughout this document. In addition, if the EPA finalizes our proposed partial approval and partial disapproval of Wyoming's SIP submission, the State (or the EPA in the potential case of a FIP) will be required to again complete the FLM consultation requirements under 40 CFR 51.308(i). Therefore, the EPA proposes to disapprove the FLM consultation component of Wyoming's SIP submission for failure to meet the requirements of 40 CFR 51.308(i), as outlined in this section.

V. Proposed Action

The EPA is proposing approval of the portions of Wyoming's 2022 SIP submission relating to 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress; 40 CFR 51.308(f)(4): reasonably attributable visibility impairment; 40 CFR 51.308(f)(5): progress report requirements; and 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements. The EPA is proposing disapproval of the remainder of Wyoming's 2022 SIP submission, which addresses 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308 (f)(3): reasonable progress goals; and 40 CFR 51.308(i): FLM consultation.

VI. Environmental Justice

The EPA conducted an environmental justice (EJ) screening analysis around the location of the facilities associated with Wyoming's 2022 SIP submission to identify potential environmental stressors on these communities. The EPA is providing the information associated with this analysis for informational purposes only; it does not form any part of the basis of this proposed action. The EPA conducted the screening analyses using EJScreen, an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining various environmental and demographic indicators.[196]

The EPA prepared EJScreen reports covering buffer areas of approximately six miles around the twelve facilities selected for four-factor analysis in Wyoming's 2022 SIP submission.[197] From those reports, no facilities showed environmental justice indices greater than the 80th national percentiles.[198] The full, detailed EJScreen reports are provided in the docket for this rulemaking.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to partially approve and partially disapprove the state's SIP submission as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where 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, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

[193] Wyoming 2022 SIP submission at 25–26.

[194] Wyoming 2022 SIP submission at appendix M.

[195] Wyoming 2022 SIP submission at 26–27.

[196] The EJSCREEN tool is available at *https://www.epa.gov/ejscreen.*

[197] *See* EJScreens in docket.

[198] This means that 20 percent of the U.S. population has a higher value. The EPA identified the 80th percentile filter as an initial starting point for interpreting EJScreen results. The use of an initial filter promotes consistency for the EPA's programs and regions when interpreting screening results.

Wyoming did not evaluate environmental justice considerations as part of its SIP submission; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice screening analysis, as described previously in section VI. Environmental Justice. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. There is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 24, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–16718 Filed 7–31–24; 8:45 am]

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text is available at *https://www.govinfo.gov/app/collection/plaw*. Some laws may not yet be available.

H.R. 1105/P.L. 118–72
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Improving Access to Our Courts Act (July 30, 2024)

S. 1973/P.L. 118–74
All-American Flag Act (July 30, 2024)

S. 3249/P.L. 118–75
To designate the outpatient clinic of the Department of Veterans Affairs in Wyandotte County, Kansas City, Kansas, as the ''Captain Elwin Shopteese VA Clinic''. (July 30, 2024)

S. 3285/P.L. 118–76
To rename the community-based outpatient clinic of the Department of Veterans Affairs in Butte, Montana, as the ''Charlie Dowd VA Clinic''. (July 30, 2024)

S. 3706/P.L. 118–77
Victims' Voices Outside and Inside the Courtroom Effectiveness Act (July 30, 2024)

S. 4548/P.L. 118–78
Foreign Extortion Prevention Technical Corrections Act (July 30, 2024)

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Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__layouts/pg/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2024

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 1	Aug 16	Aug 22	Sep 3	Sep 5	Sep 16	Sep 30	Oct 30
August 2	Aug 19	Aug 23	Sep 3	Sep 6	Sep 16	Oct 1	Oct 31
August 5	Aug 20	Aug 26	Sep 4	Sep 9	Sep 19	Oct 4	Nov 4
August 6	Aug 21	Aug 27	Sep 5	Sep 10	Sep 20	Oct 7	Nov 4
August 7	Aug 22	Aug 28	Sep 6	Sep 11	Sep 23	Oct 7	Nov 5
August 8	Aug 23	Aug 29	Sep 9	Sep 12	Sep 23	Oct 7	Nov 6
August 9	Aug 26	Aug 30	Sep 9	Sep 13	Sep 23	Oct 8	Nov 7
August 12	Aug 27	Sep 3	Sep 11	Sep 16	Sep 26	Oct 11	Nov 12
August 13	Aug 28	Sep 3	Sep 12	Sep 17	Sep 27	Oct 15	Nov 12
August 14	Aug 29	Sep 4	Sep 13	Sep 18	Sep 30	Oct 15	Nov 12
August 15	Aug 30	Sep 5	Sep 16	Sep 19	Sep 30	Oct 15	Nov 13
August 16	Sep 3	Sep 6	Sep 16	Sep 20	Sep 30	Oct 15	Nov 14
August 19	Sep 3	Sep 9	Sep 18	Sep 23	Oct 3	Oct 18	Nov 18
August 20	Sep 4	Sep 10	Sep 19	Sep 24	Oct 4	Oct 21	Nov 18
August 21	Sep 5	Sep 11	Sep 20	Sep 25	Oct 7	Oct 21	Nov 19
August 22	Sep 6	Sep 12	Sep 23	Sep 26	Oct 7	Oct 21	Nov 20
August 23	Sep 9	Sep 13	Sep 23	Sep 27	Oct 7	Oct 22	Nov 21
August 26	Sep 10	Sep 16	Sep 25	Sep 30	Oct 10	Oct 25	Nov 25
August 27	Sep 11	Sep 17	Sep 26	Oct 1	Oct 11	Oct 28	Nov 25
August 28	Sep 12	Sep 18	Sep 27	Oct 2	Oct 15	Oct 28	Nov 26
August 29	Sep 13	Sep 19	Sep 30	Oct 3	Oct 15	Oct 28	Nov 27
August 30	Sep 16	Sep 20	Sep 30	Oct 4	Oct 15	Oct 29	Nov 29